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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF "E3" CLAIMS

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. John Tackaberry (Chairman), Pierre Genton and Vinayak Pradhan, at its twenty-eighth session in June 1998, to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning the claims of nineteen corporations included in the fourth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait.

2. Each of the claimants had the opportunity to provide the Panel with information and documentation concerning their claims. The Panel has considered evidence from the claimants and the responses of Governments to the reports of the Executive Secretary issued pursuant to article 16 of the Rules. The Panel has retained consultants with expertise in valuation and in construction and engineering. The Panel has taken note of certain findings by other Panels of Commissioners, approved by the Governing Council, regarding the interpretation of relevant Security Council resolutions and Governing Council decisions. The Panel was mindful of its function to provide an element of due process in the review of claims filed with the Commission. Finally, the Panel has further amplified both procedural and substantive aspects of the process of formulating recommendations in its preamble to its consideration of the individual claims.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

3. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) dated 2 May 1991 (S/22559). In his report, the Secretary-General described the function of the Commission as follows:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element." (S/22559, paragraph 20).

> "The processing of claims will entail the verification of claims and evaluation of losses and the resolution of any disputed claims. The

> major part of this task is not of a judicial nature; the resolution of disputed claims would, however, be quasi-judicial. It is envisaged that the processing of claims would be carried out principally by the commissioners. Before proceeding to the verification of claims and evaluation of losses, however, a determination will have to be made as to whether the losses for which claims are presented fall within the meaning of paragraph 16 of resolution 687 (1991), that is to say, whether the loss, damage or injury is direct and as a result of Iraq's unlawful invasion and occupation of Kuwait." (S/22559, paragraph 25).

4. The Panel is entrusted with three tasks in the present proceedings. First, the Panel is required to determine whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission, i.e., whether the losses were caused directly by Iraq's invasion and occupation of Kuwait. Second, the Panel has to verify whether the alleged losses that are in principle compensable have in fact been incurred by a given claimant. Third, the Panel is required to determine whether these compensable losses were incurred in the amounts claimed, and if not, the appropriate quantum for the loss based on the evidence before the Panel.

5. In fulfilling these tasks, the Panel considered that the vast number of claims before the Commission and the time limits in the Rules necessitated the use of an approach which is itself unique, but the principal characteristics of which are rooted in generally accepted procedures for claim determination, both domestic and international. It involves the employment of well established general legal standards of proof and valuation methods that have much experience behind them. The resultant process is essentially documentary rather than oral, and inquisitorial rather than adversarial. This method carefully balances the twin objectives of speed and accuracy. It also permits the efficient resolution of the thousands of claims filed by corporations with the Commission.

B. The procedural history of the claims in the fourth instalment

6. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "'E3' Claims") on the basis of established criteria. These include the date of filing and compliance by claimants with the requirements established for claims submitted by corporations and other legal entities (the "category 'E' claims").

7. On 29 July 1998, the Panel issued a procedural order relating to the claims. In view of:

(a) the apparent complexity of the issues raised;

(b) the volume of the documentation underlying the claims; and/or

(c) the compensation sought by the claimants, the Panel decided to classify each of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. In accordance with that Rule, the Panel decided to complete its review of the claims within 12 months of the date of its procedural order.

8. In view of the review period and the available information and documentation, the Panel determined that it was able to evaluate the claims without additional information or documents from the Government of Iraq. Nonetheless, due process, the provision of which is the responsibility of the Panel, has been achieved by the insistence of the Panel on the observance by claimants of the article 35(3) requirement for sufficient documentary and other appropriate evidence.

9. Prior to presenting the fourth instalment to the Panel, the secretariat performed a preliminary assessment of each claim in order to determine whether the claim met the formal requirements established by the Governing Council in article 14 of the Rules. For those claims that did not meet the formal requirements, each claimant was notified of the deficiencies and invited to provide the necessary information.

10. Further, a review of the legal and evidentiary basis of each claim identified specific questions as to the evidentiary support for the alleged loss. It also highlighted areas of the claim in which further information and documentation was required. Consequently, questions and requests for additional documentation were transmitted to the claimants pursuant to the Rules. Upon receipt of the responses and additional documentation, a detailed factual and legal analysis of each claim was conducted.

11. That analysis brought to light the fact that many claimants lodged little material of a genuinely probative nature when they initially filed their claims. It also appears that many claimants did not retain clearly relevant documentation and were unable to provide it when asked for it. Indeed, some claimants have destroyed documents in the course of a normal administrative process without distinguishing between documents with no long term purpose and documents necessary to support the claims that claimants had already put forward. Finally, some claimants did not respond to requests for further information and evidence. The consequence has inevitably been that for a large number of loss elements the Panel has been unable to recommend any compensation. The Panel returns to this topic later.

12. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel has assumed an investigative role that goes beyond reliance merely on information and argument supplied with the claims as presented. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Next, comprehensive reports on each of the claims were prepared focusing on the appropriate valuation of each of the compensable losses, and on the question of whether the evidence produced by the claimant was sufficient in accordance with article 35(3) of the Rules.

13. The valuation analysis ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims. Each loss element was individually analysed according to a set of instructions provided by the Panel. The cumulative effect was one of the following: (a) a recommendation of full compensation for the alleged loss; (b) an adjustment to the amount of the alleged loss; or (c) a recommendation of no compensation.

C. The claimants

14. This report contains the Panel's findings with respect to the following claims for losses allegedly caused directly by Iraq's invasion and occupation of Kuwait:

(a) Alpha Professional Services Pty. Ltd., a corporation organised under the laws of Australia, which seeks compensation in the total amount of US$8,094,239;

(b) Technocon Limited, a corporation organised under the laws of the People's Republic of Bangladesh, which seeks compensation in the total amount of US$11,386,640;

(c) Mendes Junior S.A., a corporation organised under the laws of the Federative Republic of Brazil, which seeks compensation in the total amount of US$146,529,528;

(d) Technoimportexport AD, a corporation organised under the laws of the Republic of Bulgaria, which seeks compensation in the total amount of US$17,488,097;

(e) Mechel Contractors (Overseas) Ltd., a corporation organised under the laws of the Republic of Cyprus, which seeks compensation in the total amount of US$11,166,672;

(f) Strojexport Company Limited, a corporation organised under the laws of the Czech Republic, which seeks compensation in the total amount of US$99,525,690;

(g) Sochata S.A., a corporation organised under the laws of the French Republic, which seeks compensation in the total amount of US$18,086,277;

(h) Som Datt Builders Limited, a corporation organised under the laws of the Republic of India, which seeks compensation in the total amount of US$120,671,601;

(i) Snamprogetti SpA, a corporation organised under the laws of the Italian Republic, which seeks compensation in the total amount of US$68,594,738;

(j) Samsung Engineering and Construction Co. Ltd., a corporation organised under the laws of the Republic of Korea, which seeks compensation in the total amount of US$78,791,431;

(k) Construction Company "Pelagonija", a corporation organised under the laws of the Former Yugoslav Republic of Macedonia, which seeks compensation in the total amount of US$198,915,387;

(l) Dromex Roads and Bridges Construction Export Enterprise, a corporation organised under the laws of the Republic of Poland, which seeks compensation in the total amount of US$41,479,821;

(m) China Nonferrous Metal Industries Corporation, a corporation organised under the laws of the People's Republic of China, which seeks compensation in the total amount of US$42,308,482;

(n) Nassir Hazza Al-Subaei & Brothers Co., Ltd., a corporation organised under the laws of the Kingdom of Saudi Arabia, which seeks compensation in the total amount of US$11,699,415;

(o) Dodsal Pte. Ltd., a corporation organised under the laws of the Republic of Singapore, which seeks compensation in the total amount of US$22,646,081;

(p) IMP Inzeniring, Montaza, Proizvodnja d.d, a corporation organised under the laws of the Republic of Slovenia, which seeks compensation in the total amount of US$62,541,905;

(q) STFA Elta Elektrik Tesisleri A.S., a corporation organised under the laws of the Republic of Turkey, which seeks compensation in the total amount of US$14,782,121;

(r) ABB Lummus Crest Inc., a corporation organised under the laws of the United States of America, which seeks compensation in the total amount of US$28,600,308; and

(s) STATE ENTERPRISE FOREIGN ECONOMIC ASSOCIATION 'MACHINOIMPORT' SE/VO 'MACHINOIMPORT', a corporation organised under the laws of the Russian Federation, which seeks compensation in the total amount of US$812,594,345.

15. The Panel finalised its findings and recommendations with respect to twelve of the claims included in the fourth instalment on 25 June 1999. The Panel finalised its findings and recommendations with respect to the remaining seven claims included in the fourth instalment on 30 July 1999.

16. In drafting this report, the Panel has not included specific citations from restricted or non-public documents that were produced or made available to it for the completion of its work.

II. LEGAL FRAMEWORK

A. Applicable law

17. In paragraph 16 of resolution 687 (1991), the Security Council:

> "Reaffirms that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. The sources of the law and principles to be applied by the Panel are set out in article 31 of the Rules:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

19. When adopting resolution 687 (1991), the Security Council acted under chapter VII of the Charter of the United Nations which provides for maintenance or restoration of international peace and security. The Security Council also acted under chapter VII when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Specifically, under resolution 687 (1991), the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved and is not subject to review by the Panel.

20. In this context, it is necessary to address the meaning of the term "Iraq". In Governing Council decision 9 (S/AC.26/1992/9) and other Governing Council decisions, the word "Iraq" was used to mean the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. In the Report and Recommendations Made by the Panel of Commissioners Concerning the Fifth Instalment of "E3" Claims (the "Fifth Report", S/AC.26/1999/2), the Panel adopted the presumption that for contracts performed in Iraq, the other contracting party was an Iraqi Government entity. This presumption is also adopted for the claims reviewed in this report.

C. The "arising prior to" clause

21. The Panel recognises that it is difficult to establish a fixed date for the exclusion of its jurisdiction that does not contain an arbitrary element. With respect to the interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991), the Panel of Commissioners that reviewed the first instalment of "E2" claims concluded that the "arising prior to" clause was intended to exclude the foreign debt of Iraq which existed at the time of Iraq's invasion of Kuwait from the jurisdiction of the Commission. As a result, the "E2" Panel found that:

> "In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990." (the "E2" Report, S/AC.26/1998/7, paragraph 90).

22. That report was approved by the Governing Council. Accordingly, this Panel adopts for the purpose of this report the early interpretation which is to the following effect:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., such debts and obligations are not compensable by the Commission;

(b) the limitation contained in the clause "arising prior to 2 August 1990" was intended to leave unaffected the debts and obligations of Iraq which existed prior to Iraq's invasion and occupation of Kuwait; and

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse.

23. Thus, the Panel accepts that, in general, a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt and/or obligation that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

24. Paragraph 21 of Governing Council decision 7 (S/AC.26/1991/7) is the seminal rule on "directness" for category "E" claims. It provides in relevant part that compensation is recoverable for:

> "... any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."

25. The text of paragraph 21 of decision 7 is not exhaustive and leaves open the possibility that there may be causes of "direct loss" other than those enumerated. Paragraph 6 of decision 15 of the Governing Council (S/AC.26/1992/15) confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to prove specifically that a loss that was not suffered as a result of one of the five categories of events set out in paragraph 21 of decision 7 is nevertheless "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct". (See also paragraph 9 of decision 9).

26. While the phrase "as a result of" contained in paragraph 21 of decision 7 is not further clarified, Governing Council decision 9 provides guidance as to what may be considered "losses suffered as a result of" Iraq's invasion and occupation of Kuwait. It identifies the three main categories of loss types in the "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties. Thus, decisions 7 and 9 provide specific guidance to the Panel as to how the "direct loss" requirement must be interpreted.

27. In the light of the decisions of the Governing Council identified above, the Panel has reached certain conclusions as to the meaning of "direct loss". These conclusions are set out in the following paragraphs.

28. With respect to physical assets in Iraq or in Kuwait as at 2 August 1990, a claimant can prove a direct loss by demonstrating two matters. First, that the breakdown in civil order in these countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees. Second, as set forth in paragraph 13 of decision 9, that the claimant left physical assets in Iraq or in Kuwait.

29. With respect to losses relating to contracts to which Iraq was a party, force majeure or similar legal principles are not available as a defence to the obligations of Iraq.

30. With respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following Iraq's invasion caused the claimant to evacuate the personnel needed to perform the contract.

31. In the context of the losses set out above, reasonable costs which have been incurred to mitigate those losses are direct losses. The Panel bears in mind that the claimant was under a duty to mitigate any losses that could have been reasonably avoided after the evacuation of its personnel from Iraq or Kuwait.

32. These findings regarding the meaning of "direct loss" are not intended to resolve every issue that may arise with respect to the Panel's interpretation of Governing Council decisions 7 and 9. Rather, these findings are intended as initial parameters for the review and evaluation of the claims in the present report.

E. Date of loss

33. There is no general principle with respect to the date of loss. It needs to be addressed on a case by case basis. In addition, the individual loss elements of each claim may give rise to different dates if analysed strictly. However, applying a different date to each loss element within a particular claim is impracticable as a matter of administration. Accordingly, the Panel has decided to determine a single date of loss for each claimant which in most cases coincides with the date of the collapse of the project.

F. Currency exchange rate

34. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

35. Several of the claimants have argued that their contracts contain currency exchange rates and, therefore, that these contractually agreed exchange rates should apply to all of their losses. The Panel agrees that, as a general rule, the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically agreed by the parties.

36. For losses that are not contract based, however, the contract rate is not usually an appropriate rate of exchange. In the claims before the Panel, the valuation of tangible assets was not contemplated by the parties when agreeing to an exchange rate in the underlying contracts. In addition, these types of items are readily traded on the international markets. A rate of exchange determined by reference to such international trading appears to this Panel to be an appropriate one to apply to such claims. In this context, the United Nations Monthly Bulletin of Statistics

has been the source of commercial exchange rates for all preceding Commission awards. Therefore, for non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics, on the date of loss.

G. Interest

37. On the issue of the appropriate interest rate to be applied, the relevant Governing Council decision is decision 16 (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards", while postponing any decision on the methods of calculation and payment.

38. The Panel recommends that interest shall run from the date of loss.

H. Evidentiary requirements

39. Pursuant to article 35(3) of the Rules, corporate claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has stated in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to justify a recommendation for compensation.

40. The Panel takes this opportunity to emphasise that what is required of a claimant by article 35(3) of the Rules is the presentation to the Commission and the Panel of evidence that must go to both causation and quantum. The Panel's interpretation of what is appropriate and sufficient evidence will vary according to the nature of the claim. That standard is also affected by the fact that, in the case of the claims which are the subject of this report, Iraq's input is limited to the participation defined by article 16 of the Rules. In implementing this approach, the Panel applied the relevant principles extracted from those within the corpus of principles referred to in article 31 of the Rules. The Panel returns to this important topic at paragraph 46 and following.

I. Claims preparation costs

41. Numerous claimants sought to recover compensation for the cost of preparing their claims. The compensability of claim preparation costs has not hitherto been ruled on and will be the subject, in due course, of a specific decision by the Governing Council. Accordingly, the Panel makes no recommendation with respect to costs of claim preparation in any of the claims where it is raised.

III. AMPLIFICATION OF THE REVIEW PROCESS: THE PROCEDURE

42. The Panel has now had the opportunity to review a considerable number of claims in the population of construction and engineering claims allocated to it. It has had the opportunity to analyse many of the issues that are likely to arise in these construction cases; and has had the benefit of many decisions by other Panels. In the result, this is a convenient time and place for it to address two matters. First, it wishes to make some comments on the procedure involved in evaluating the claims put before it and of formulating recommendations for the consideration of the Governing Council. Second, and at a later stage, it will turn to some analyses of recurrent issues. The comments on procedure are for the purpose of bringing transparency to the decision making process of this Panel.

A. Consistency in Panel decisions

43. It may be that the Anglo-Saxon doctrine of precedent should not apply to the deliberations and recommendations of the Panels. Nonetheless, once a motivated recommendation of one Panel is adopted by a decision of the Governing Council, it is something to which other Panels must give great weight.

44. One may assume that there has been a claim upon which a Panel has already issued a recommendation supported by a full analysis. A subsequent claim is then presented to another Panel. As it happens, that subsequent claim manifests the same characteristics as the prior claim. In that event, the second Panel will follow the principle developed by the prior Panel. Of course, there may still be differences inherent in the two claims at the level of proof of causation or quantum. Nonetheless the principle will be the same.

45. Alternatively, that second claim will manifest different characteristics to the first claim. In that event, those different characteristics may give rise to a different issue of principle and thus warrant a different conclusion by the subsequent Panel to that of the previous Panel.

B. Evidence of loss

1. Sufficiency of evidence

46. At the end of the day, claims that are not supported by sufficient and appropriate evidence fail. And in the context of the construction claims that are before this Panel, the most important evidence is documentary. It is in this context that the Panel records that a syndrome which it found striking when it addressed the claims included in the Fifth Report has continued to manifest itself in the claims included in this report. This was the reluctance of claimants to make critical documentation available to the Panel.

47. Imperatively, the express wording of decision 46 of the Governing Council requires that "... claims received in categories "D", "E", and "F" must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss...". In this same decision, the Governing Council decided that "...no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant,...". (S/AC.26/1998/46)

48. Also on 16 September 1998, the Panel exercised its power under the Rules by issuing Procedural Orders in connection with this instalment. These Orders required each claimant, pursuant to articles 9, 35(3), 35(4), 36 and 38(d) of the Rules, to submit by 30 November 1998 responses to the "Questions to the Claimant" annexed to the Procedural Order. Among other things considerable emphasis was placed on the need for the claimant to provide sufficient documentary and other appropriate evidence to the Commission.

49. Thus there is an obligation to provide the relevant documentary evidence on both the first filing of a claim, and on subsequent steps.

50. Upon review of the claims in this instalment, the Panel records again that many claimants did not consider it appropriate to comply with the requirements of the Rules in this respect.

51. Most remarkable among the examples before the Panel in the present instalment was the claimant who simply refused, on grounds that it would constitute a breach of Iraqi security laws, to provide the contract out of which its claim for compensation was said to arise.

52. Of course, this example is extreme. However, the same problem reappears in many of the other claims in this instalment in a less dramatic fashion, and in various manifestations. The manifestations include the following:

(a) the claimant asserts that the documents which evidence the claim can be viewed, if so desired, at various locations around the globe; and

(b) the claimant seeks to explain the lack of documentation by asserting that all the documentation was in areas of civil disorder and was destroyed, or, at least, cannot be accessed.

53. However, it is principally for claimants to bring to the Commission in Geneva, Switzerland, the documents upon which they wish to rely. It is only in special circumstances, where the generic problems of the particular type of claim or the sheer magnitude of the task requires on-site investigation, that a departure from this rule can be justified.

54. Further, every single claimant is or was based outside Iraq and is or was engaged in projects worth many tens if not hundreds of millions of United States dollars. The Panel is quite simply unprepared to believe that relevant duplicates of important documents, if not original records, were not kept at offices outside Iraq.

55. What is more, the absence of any relevant contemporary record to support a particular claim means that the claimant is inviting the Panel to make an award, often of millions of dollars, on no foundation other than the assertion of the claimant. This would not satisfy the "sufficient evidence" rule in article 35(3) of the Rules. It is something that the Panel is unable to do.

2. Sufficiency of evidence under article 35 (3): The obligation of disclosure

56. Next in the context of the documentary evidence, this Panel wishes to highlight that claims must be supported by sufficient documentary and other appropriate evidence. This involves bringing to the attention of the Commission all material aspects of the claim, whether such aspects are seen by the claimant as beneficial to or reductive of its claims. The obligation is not dissimilar to good faith requirements under domestic jurisdictions.

3. Missing documents: The nature and adequacy of the paper trail

57. The Panel now turns to the question of what a claimant must do.

58. Where documents cannot be supplied, their absence must be explained in a credible manner. The explanation must itself be supported by the appropriate evidence. Claimants may also supply substitute documentation for or information about the missing documents. Claimants must remember that the mere fact that they suffered a loss at the same time as the hostilities in the Persian Gulf were starting or were in process does not mean that the loss was directly caused by Iraq's invasion and occupation of Kuwait. A causative link must be established. It should also be borne in mind that it was not the intention of the Security Council in its resolutions to provide a "new for old" basis of reimbursement of the losses suffered in respect of tangible property. Capital goods depreciate. That depreciation must be taken into account and demonstrated in the evidence filed with the Commission. In sum, in order for evidence to be considered appropriate and sufficient to demonstrate a loss, the Panel expects claimants to present to the Commission a coherent, logical and sufficiently evidenced file leading to the financial claims that they are making.

59. Of course, the Panel recognises that in time of civil disturbances, the quality of proof may fall below that which would be submitted in a peace time situation. Persons who are fleeing for their lives do not stop to collect the audit records. Allowances have to be made for such vicissitudes. But the fact that offices on the ground in Kuwait, for example, were looted and/or destroyed would not explain why claimants have not produced documentary records that would reasonably be expected to be found at claimants' head offices situated in other countries.

60. The Panel has approached the claims in the light of the general and specific requirements to produce documents noted above. Where there has been a lack of documentation, combined with no or no adequate explanation for that lack, and an absence of alternative evidence to make good any part

of that lack, the Panel has had no opportunity or basis upon which to make a recommendation.

C. Amending claims after filing

61. In the course of the administration of the claims after they have been filed with the Commission, further information is sought from the claimants pursuant to the Rules. When the claimants respond they sometimes seek to use the opportunity to amend their claims. They add new loss elements. They increase the amount originally sought in respect of a particular loss element. They transfer monies between or otherwise adjust the calculation of two or more loss elements. They do all of these.

62. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council approved a mechanism for these claimants to file unsolicited supplements until 11 May 1998. A response, post 11 May 1998, to an inquiry for additional evidence is not an opportunity for a claimant to increase the quantum of a loss element or elements or to seek to recover in respect of new loss elements. In these circumstances, the Panel is unable to take into account such increases nor such new loss elements when it is formulating its recommendation to the Governing Council. It does, however, take into account additional documentation where that is relevant to the original claims, either in principle or in detail. It also exercises its inherent powers to re-characterise a loss which is properly submitted as to time, but is inappropriately allocated.

63. Some claimants also file unsolicited submissions. These too sometimes seek to increase the original claim in the ways indicated in the previous paragraph. Such submissions when received after 11 May 1998 fall to be treated in the same way as amendments put forward in solicited supplements. Accordingly the Panel is unable to, and does not, take into account such amendments when it is formulating its recommendation to the Governing Council.

IV. AMPLIFICATION OF THE REVIEW PROCESS: RECURRENT SUBSTANTIVE ISSUES

64. As noted above, the Panel has now had the opportunity to review a considerable number of claims in the population of construction and engineering claims allocated to it. It has had the opportunity to analyse many of the issues that are likely to arise in these construction contracts; and has had the benefit of many decisions by other Panels. It has dealt above, in Part III, with the procedure involved in evaluating the claims put before it and of formulating recommendations for the consideration of the Governing Council. It now turns to some analyses of the recurrent substantive issues that arise in construction contracts.

65. Many issues arise more than once in the various claims that are included in this instalment. Rather than repeat the Panel's analysis seriatim each time such an issue arises, it is convenient to address the principle in a paragraph at an early stage of this report.

66. The purpose of this exercise is the provision of a template for the individual claims, with the aim of compressing the reports of this Panel. It also makes available an analysis of key issues in a convenient place and format.

67. Some of these principal issues have been addressed in the procedural history and legal framework above. Others are addressed in this section of the report.

A. Contract losses

1. Advance payments

68. Many construction contracts provide for an advance payment to be made by the employer to the contractor. These advance payments are often calculated as a percentage of the initial price (initial, because many such contracts provide for automatic and other adjustments of the price during the execution of the works). The purpose of the advance payment is to facilitate certain activities which the contractor will need to carry out in the early stages.

69. Mobilisation is often one such activity. Plant and equipment may need to be purchased. A workforce will have to be assembled and transported to the work site, where facilities will be needed to accommodate it. Another such activity is the ordering of substantial or important materials which are in short supply and may, therefore, be available only at a premium and/or at a long lead time.

70. Advance payments are usually secured by a bond provided by the contractor, and are usually paid upon the provision of the bond. They are frequently repaid over a period of time by way of deduction by the employer from the sums which are payable at regular intervals (often monthly) to the contractor for work done. See, in the context of payments which are recovered over a period of time, the observations about amortisation at paragraph 128, _infra_. Those observations apply _mutatis mutandis_ to the repayment of advance payments.

71. The Panel notes that some claimants presenting claims have not clearly accounted for the amounts of money paid to them earlier by the Iraqi employer. This Panel regularly sees evidence of advance payments amounting to tens of millions of United States dollars. The Panel would expect these payments to be deductible from the claimed amounts for contract losses. It follows that where advance payments have been part of the contractual arrangements between the claimant and the employer, the claimant must account for these payments in reduction of its claims, unless these payments can be shown to have been recouped in whole or in part by the employer. Where no explanation or proof of repayment is forthcoming, the Panel has no option but to conclude that these amounts paid in advance are due, on a final accounting, to the employer, and must be deducted from the claimant's claim.

2. Contractual arrangements to defer payments

(a) The analysis of "old debt"

72. Where payments are deferred under the contracts upon which the claims are based, an issue arises as to whether the claimed losses are "debts and obligations arising prior to 2 August 1990" and therefore outside the jurisdiction of the Commission.

73. In its first report, the "E2" Panel interpreted Security Council resolution 687 (1991) as intending to eliminate what may be conveniently called "old debt". In applying this interpretation to the case before it the "E2" Panel identified, as "old debt", cases where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990. In those cases, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990. "Performance" as understood by the Panel for purposes of this rule meant complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance. In the case the "E2" Panel was considering, the work under the contract was clearly performed prior to 2 May 1990. However, the debts were covered by a form of deferred payments agreement dated 29 July 1984. This agreement was concluded between the parties to the original contracts and postdated the latter.

74. In its analysis, the "E2" Panel found that deferred payments agreements go to the very heart of what the Security Council described in paragraph 16 of resolution 687 as a debt of Iraq arising prior to 2 August 1990. It was this very kind of obligation which the Security Council had in mind when, in paragraph 17 of resolution 687 (1991), it directed Iraq to "adhere scrupulously" to satisfying "all of its obligations concerning servicing and repayment". Therefore, irrespective of whether such deferred payment arrangements may have created new obligations on the part of Iraq under a particular applicable municipal law, they did not do so for the purposes of resolution 687 (1991) and are therefore outside the jurisdiction of this Commission.

75. The arrangements that the "E2" Panel was considering were not arrangements that arose out of genuine arms' length commercial transactions, entered into by construction companies as part and parcel of their normal businesses. Instead the situation which the "E2" Panel was addressing was described as follows:

> "The negotiation of these deferred payment arrangements was typically conducted with Iraq not by the contractor or supplier itself, but rather by its Government. Typically, the Government negotiated on behalf of all of the contracting parties from the country concerned who were in a similar situation. The deferred payment arrangements with Iraq were commonly entered into under a variety of forms, including complicated crude oil barter arrangements under which Iraq

> would deliver certain amounts of crude oil to a foreign State to satisfy consolidated debts; the foreign State then would sell the oil and, through its central bank, credit particular contractors' accounts." (S/AC.26/1998/7, paragraph 93).
>
> "Iraq's debts were typically deferred by contractors who could not afford to "cut their losses" and leave, and thus these contractors continued to work in the hope of eventual satisfaction and continued to amass large credits with Iraq. In addition, the payment terms were deferred for such long periods that the debt servicing costs alone had a significant impact on the continued growth of Iraq's foreign debt." (S/AC.26/1998/7, paragraph 94).

76. This Panel agrees.

(b) Application of the "old debt" analysis

77. In the application of this analysis to cases other than those considered by the "E2" Panel, there are two aspects which are worth mentioning.

78. The first is that the problem does not arise where the actual work has been done after the 2 May 1990. The deferment is irrelevant. The issue resolves itself in these cases into the simple one of proof of the execution of the work, the quantum, the non payment and causation.

79. The second concerns the ambit of the above analysis. As noted above, the claims which led to the above analysis arose out of "non-commercial" arrangements. They were situations where the original terms of payment entered into between the parties had been renegotiated during the currency of the contract and/or the negotiations or renegotiations were driven by inter-governmental exchanges. Such arrangements were clearly the result of the impact of Iraq's increasing international debt.

80. Thus one can see underlying the "E2" Panel analysis two important factors. The first was the subsequent renegotiation of an existing contract's payment terms to the detriment of the claimant (contractor). The second was the influence on contracts of the transactions between the respective governments. In both cases, a key element underlying the arrangements must be the impact of Iraq's mountain of old debt.

81. In the view of this Panel, where either of these factors is wholly or partially the explanation of the "loss" suffered by the claimant, then that loss or the relevant part of it is outside the jurisdiction of the Commission and cannot form the basis of recommendation by a Panel. It is not necessary that both factors be present. A contract that contained deferment provisions as originally executed would still be caught by the "arising prior to" rule if the contract was the result of an intergovernmental agreement driven by the exigencies of Iraq's financial problems. It would not be a commercial transaction so much as a political agreement, and the "loss" would not be a loss falling within the jurisdiction of the Commission.

(c) Arms' length arrangements to defer payment: Builder as financier

82. However the above analysis, while it is comprehensive, is not exhaustive. It seems to this Panel that, at the very least, it does not cover those contracts which not only had always contained a provision for deferment (where such a provision was part and parcel of the basis upon which the contractor bid for and won the job); but where the undertaking of the financing of the project was a normal part of the claimant's business, or where the decision to finance had been a straightforward commercial decision of the claimant.

83. There is no doubt that contractors increasingly take on the role of financier as well as that of builder. There is no reason why they should not do so. It is a matter of commercial decision. It is a trend particularly to be found in major energy and infrastructure projects. It is a feature of what are sometimes called BOT contracts - BOT standing for Build, Operate, Transfer. Often it is an arrangement which is found where it is anticipated that revenue generated by whatever has been constructed - income from the sale of liquid petroleum gas; tolls levied on the users of a road; and so forth - will provide both revenue for the employer and reimbursement for the contractor.

84. These arrangements are, by contrast with those contracts discussed by the "E2" Panel, commercial arms' length transactions. They are not necessarily a function of Iraq's pre-existing debt. Of course, they are a fairly new development on the economic horizon of the construction and the energy world. They are attractive to an authority or government that is short of money. Equally, the drive to let contracts on this basis often stems from the reluctance of the employer to incur the whole risk of the huge costs of the initial development. But there are also plenty of examples to be seen in the commercial world of governments and statutory undertakers who are awash with money who nonetheless choose to proceed in this way. After all, such a contract puts the employer in an attractive position. It does not have to risk any money of its own; and if all goes well, in a few years it will have a working productive capital asset. The financial package is attractive; and that is the principal motive for an employer to enter into such an arrangement.

85. Therefore in the cases under consideration by this Panel, it is necessary to identify and distinguish those construction contracts that have come into being or been modified in order to meet the problems thrown up by Iraq's old international debt and those where purely commercial considerations have applied. It is not sufficient simply to highlight the fact that the contractual arrangements provide for deferred payments, and then to conclude that the "old debt" rule applies. While it is right that, in the context of Iraq, the presence of arrangements for a substantial deferment of the payment of considerable sums must prima facie suggest that the case is one of "old debt", nonetheless a deeper analysis must follow.

86. If that analysis fails to displace the prima facie conclusion, then the "old debt" principle applies, and the Panel lacks jurisdiction.

87. If however that analysis displaces the prima facie conclusion and shows the arrangements to be genuinely commercial, then different considerations apply.

88. In that event, the arrangements should, prima facie, be analysed in a manner comparable to a standard commercial loan agreement. In such an agreement, a loan is made at one point in time and is repaid later. The re-payment may be by way of a single payment or by a series of instalments. In either case, it would not be sufficient, in the case of a claim to the Commission by the lender, to look simply at the date the loan was made in order to determine whether the Commission had jurisdiction. Instead, it is necessary to look at the date or dates on which the repayment or repayments were to be made.

(d) Commercial arrangements for deferred payments in construction contracts - Legal bases

89. The necessity of the approach identified in the immediately preceding paragraph is supported, if not dictated, by both of two legal analyses. One analysis derives from Roman law. A contract of loan under Roman law is not synallagmatic. The only "performance" is by the borrower. The making of the loan by the lender is not performance properly so called, but the act which creates the contractual relationship. The Commission's jurisdiction will encompass claims by lenders for instalments which were not but should have been repaid during the period of the invasion and occupation of Kuwait.

90. The other analysis derives from the common law. Under that analysis, the lender has a continuing (negative) obligation not to seek recovery of the loan other than in accordance with the terms of the contract of loan. Failing to observe this obligation - for example, by a bank calling in a loan prior to the due date - would be a breach of contract sounding in damages. On this analysis, there is continuing performance by the lender while the loan is properly outstanding in whole or in part. Again, the Commission's jurisdiction would encompass a claim in respect of instalments of the loan which should have been repaid but were not during the period of the invasion and occupation of Kuwait.

91. In the view of this Panel, the same principle applies to those construction contracts where, as part of a genuine arm's length transaction, a contractor has taken on the role of financing the project as well as constructing it.

3. Losses arising as a result of unpaid retentions

92. The claims before this Panel include requests for compensation for what could be described as another form of deferred payment, namely unpaid retention.

93. Under many if not most construction contracts, provision is made for the regular payment to the contractor of sums of money during the performance of the work under the contract. The payments are often

monthly, and often calculated by reference to the amount of work that the contractor has done since the last regular payment was calculated.

94. Where the payment is directly related to the work done, it is almost invariably the case that the amount of the actual (net) payment is less than the contractual value of the work done. This is because the employer retains in his own hands a percentage (usually 5 per cent or 10 per cent and with or without an upper limit) of that contractual value. (The same approach usually obtains as between the contractor and his subcontractors.) The retained amount is often called the "retention" or the "retention fund". It builds up over time. The less work the contractor had carried out before the project comes to an early halt, the smaller the fund.

95. The retention is usually payable in two stages, one at the commencement of the maintenance period, as it is often called, and the other at the end. The maintenance period usually begins when the employer first takes over the project, and commences to operate or use it. Thus the work to which any particular sum which is part of the retention fund relates may have been executed a very long time before the retention fund is payable.

96. Retention fund provisions are very common in the construction world. The retention fund serves two roles. It is an encouragement to the contractor to make good defects appearing before or during the maintenance period. It also provides a fund out of which the employer can reimburse itself for defects that appear before or during the maintenance period which the contractor has, for whatever reason, failed or refused to make good.

97. In the claims before this Panel, events - in the shape of Iraq's invasion and occupation of Kuwait - have intervened. The contract has effectively come to an end. There is no further scope for the operation of the retention provisions. It follows that the contractor, through the actions of Iraq, has been deprived of the opportunity to recover the money. In consequence the claims for retention fall within the jurisdiction of the Commission.

98. In the light of the above considerations it seems to this Panel that the situation in the case of claims for retention is as follows:

(a) The evidence before the Commission may show that the project was in such trouble that it would never have reached a satisfactory conclusion. In such circumstances, there can be no positive recommendation, principally because there is no direct causative link between the loss and the invasion and occupation of Kuwait.

(b) Equally it may be the case that the evidence may show that the project would have reached a conclusion, but that there would have been problems to resolve. Accordingly the contractor would have had to expend money resolving those problems. That potential cost would have to be deducted from the claim for retention; and accordingly the most convenient course would be to recommend an award to the contractor of a suitable percentage.

(c) Finally, on the evidence it may be the case that there is no reason to believe or conclude that the project would have gone other than satisfactorily. In those circumstances, it seems that the retention claim should succeed.

4. Guarantees, bonds, and like securities

99. Financial recourse agreements are part and parcel of a major construction contract. Instances are (a) guarantees - for example given by parent companies, and/or through banks; (b) what are called "on demand" or "first demand" bonds (hereinafter "on demand bonds") which support such matters as bidding and performance; and (c) guarantees to support advance payments. (Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different category. As to these, see paragraphs 109 to 117, *infra*).

100. Financial recourse arrangements give rise to particular problems when it comes to determining the claims lodged in the population of construction and engineering claims. A convenient and stark example is that of the on demand bond.

101. The purpose of an on demand bond is to permit the beneficiary to obtain moneys under the bond without having to prove default on the part of the other party - namely, in the situations under discussion here, the contractor executing the work. Such a bond is often set up by way of a guarantee given by the contractor or its parent to its own bank in its home state. That bank gives an identical bond to a bank (the second bank) in the state of the employer under the construction contract. In its turn, the second bank gives an identical bond to the employer. This leaves the employer, at least theoretically, in the very strong position of being able, without having to prove any default on the part of the contractor, to call down a large sum of money which will be debited to the contractor.

102. Of course, the contractor's bank will have two arrangements in place. First, an arrangement whereby it is secured as to the principal sum, the subject of the bond, in case the bond is called. Second, it will have arranged to exact a service charge, typically raised quarterly, half-yearly or annually.

103. Many claimants have raised claims in respect of the service charges; and also in respect of the principal sums. The former are often raised in respect of periods of years measured from the date of Iraq's invasion and occupation of Kuwait. The latter have, hitherto at least, been cautionary claims, in case the bonds are called in the future.

104. The Panel approaches this issue by observing that the strength of the position given to the employer by the on demand bond is sometimes more apparent than real. This derives from the fact that the courts of some countries are reluctant to enforce payment of such bonds if they feel that

there is serious abuse by the employer of its position. For example, where there is a persuasive allegation of fraud, some courts will be prepared to injunct the beneficiary from making a call on the bond. It is also the case that there may be remedies for the contractor in some jurisdictions when the bonds are called in circumstances that are clearly outside the original contemplation of the parties.

105. The Panel notes that most if not all contracts for the execution of major construction works by a contractor from one country in the territory of another country will have clauses to deal with war, insurrection and/or civil disorder. Depending on the approach of the relevant governing law to such matters, these provisions, if triggered, may have a direct or indirect effect on the validity of the bond. Direct, if under the relevant legal regime, the effects of the clause in the construction contract apply also to the bond; indirect if the termination or modification of the underlying obligation (the construction contract) gives rise to the opportunity to seek a forum-driven modification or termination of the liabilities under the bond.

106. In addition, the simple passage of time is likely to give rise to the right to treat the bond obligation as expired or unenforceable, or to seek a forum-driven resolution to the same effect.

107. In sum and in the context of Iraq's invasion and occupation of Kuwait and the time which has passed since then, it seems to the Panel that it is highly unlikely that on demand bond obligations of the sort the Panel has seen in the instalments it has addressed are alive and effective.

108. If that analysis is correct, then it seems to the Panel that claims for service charges on these bonds will only be sustainable in very unusual circumstances. Equally, claims for the principal will only be sustainable where the principal has in fact been irrevocably paid out and where the beneficiary of the bond had no factual basis to make a call upon the bond.

5. Export credit guarantees

109. Arrangements with government sponsored bodies that provide what might be called "fall-back" insurance are in a different case to guarantees generally. These forms of financial recourse have names such as "credit risk guarantees". They are in effect a form of insurance, often underwritten by the government of the territory in which the contractor is based. They exist as part of the economic policy of the government in question, in order to encourage trade and commerce by its nationals abroad.

110. Such guarantees often have a requirement that the contractor must exhaust all local remedies before calling on the guarantee; or must exhaust all possible remedies before making a call.

111. Claims have been made by parties for:

(a) reimbursement of the premia paid to obtain such guarantees; and also for

(b) shortfalls between the amounts recovered under such guarantees and the losses said to have been incurred.

In the view of the Panel, one of these types of claim is misconceived; and the other is mis-characterised.

112. The bodies that issue such guarantees have also made claims before the Commission for moneys paid out under such guarantees. These claims are an issue for another Panel.

113. A claim for the premia is misconceived. A premium paid for any form of insurance is not recoverable unless the policy is avoided. Once the policy is in place, either the event that the policy is intended to embrace occurs, or it does not. If it does, then there is a claim under the policy. If it does not then there is no such claim. In neither case does it seem to the Panel that the arrangements - prudent and sensible as they are - give rise to a claim for compensation for the premia. There is no "loss" properly so called or any causative link with Iraq's invasion and occupation of Kuwait.

114. Further, where a contractor has in fact been indemnified in whole or in part by such a body in respect of losses incurred as a result of Iraq's invasion and occupation of Kuwait, there is, quanto tanto, no longer any loss for which that contractor can claim to the Commission. Its loss has been made whole.

115. The second situation is that where a contractor claims for the balance between what are said to be losses incurred as a result of Iraq's invasion and occupation of Kuwait and what has been recovered from the guarantor.

116. Here the claim is mis-characterised. That balance may indeed be a claimable loss; but its claimability has nothing to do with the fact that the moneys represent a shortfall between what has been recovered under the guarantee and what has been lost. Instead, the correct analysis should start from a review of the cause of the whole of the loss of which the balance is all that remains. The first step is to establish whether there is evidence to support that whole sum, that it is indeed a sum that the claimant has paid out and/or failed to recover; and that there is the necessary causation. To the extent that the sum is established, then to that extent the claim is prima facie compensable. However, so far as there has been reimbursement by the guarantor, the loss has been made good, and there is nothing left to claim for. It is only if there is still some qualifying loss, not made good, that there is room for a recommendation of this Panel.

117. Finally, there are the claims by the bodies granting the credit guarantees who have paid out sums of money. They entered into an insurance arrangement with the contractor. In consideration of that arrangement, they required the payment of premia. As before, either the event covered by the insurance occurred or it did not. In the former case, the Panel would have thought that the guarantor was contractually obliged to pay out;

and in the latter case, not so. Whether any payments made in these circumstances give rise to a compensable claim is not a matter for this Panel. Such claims come within the population of claims allocated to the "E/F" Panel.

6. Claims for contract losses with a Kuwaiti party

118. Some of the claims relate to losses suffered as a result of non-payment by a Kuwaiti or other entity. The fact of such a loss, *simpliciter*, does not establish it as a direct loss within the meaning of Security Council resolution 687 (1991). In order to obtain compensation, a claimant should lodge sufficient evidence that the Kuwaiti or other entity carrying on business in Kuwait on 2 August 1990 was unable to make payment as a direct result of Iraq's invasion and occupation of Kuwait. A good example of this would be that the party was insolvent and that that insolvency was a direct result of the illegal invasion and occupation of Kuwait. At the very least a claimant should demonstrate that the Kuwaiti or other party had not renewed operations in Kuwait after the occupation. In the event that there are multiple factors which have resulted in the failure to resume operations, apart from the proved insolvency of the Kuwaiti or other party, the Panel will have to be satisfied that the effective reason or *causa causans* was Iraq's invasion and occupation of Kuwait. Any failure to pay because the Kuwaiti or other party was excused from performance by the operation of Kuwaiti law which came into force after Iraq's invasion and occupation of Kuwait is in the opinion of this Panel the result of a *novus actus interveniens* and it is not a direct loss arising out of Iraq's invasion and occupation of Kuwait.

B. Claims for overhead and "lost profits"

1. General

119. Any construction project can be broken down into a number of components. All of these components contribute to the pricing of the works. In the Panel's view, it is helpful for the examination of these kinds of claims to begin by rehearsing in general terms the way in which many contractors in different parts of the world construct the prices that ultimately appear in the construction contracts they sign. Of course, there is no absolute rule as to this process. Indeed, it is unlikely that any two contractors will assemble their bids in exactly the same way. But the constraints of construction work and the realities of the financial world impose a general outline from which there will rarely be a substantial deviation.

120. Many of the construction contracts encountered in this instalment contain a schedule of rates or a "bill of quantities". This document defines the amount to be paid to the contractor for the work performed. It is based on previously agreed rates or prices. The final contract price is the aggregate value of the work calculated at the quoted rates together with any variations and other contractual entitlements and deductions which increase or decrease the amount originally agreed.

121. Other contracts in this instalment are lump sum contracts. Here the schedule of rates or bill of quantities has a narrower role. It is limited to such matters as the calculation of the sums to be paid in interim certificates and the valuation of variations.

122. In preparing the schedule of rates, the contractor will plan to recover all of the direct and indirect costs of the project. On top of this will be an allowance for the "risk margin". In so far as there is an allowance for profit it will be part of the "risk margin". However, whether or not a profit is made and, if made, in what amount, depends obviously on the incidence of risk actually incurred.

123. An examination of actual contracts combined with its own experience of these matters has provided the Panel with guidelines as to the typical breakdown of prices that may be anticipated on construction projects of the kind relevant to the claims included in this instalment.

124. The key starting point is the base cost - the cost of labour, materials and plant - the prix secs, as the French would have it. In another phrase, this is the direct cost. The direct cost may vary, but usually represents 65 to 75 per cent of the total contract price.

125. To this is added the indirect cost - for example the supply of design services for such matters as working drawings and temporary works by the contractor's head office. Typically, this indirect cost represents about 25 to 30 per cent of the total contract price.

126. Finally, there is what is called the "risk margin" - the allowance for the unexpected. The risk margin is generally in the range of between barely above zero and five per cent of the total contract price. The more smoothly the project goes, the less the margin will have to be expended. The result will be enhanced profits, properly so called, recovered by the contractor at the end of the day. The more the unexpected happens and the more the risk margin has to be expended, the smaller the profit will ultimately be. Indeed, the cost of dealing with the unexpected or the unplanned may equal or exceed the risk margin, leading to a nil result or a loss.

127. In the view of the Panel, it is against this background that some of the claims for contract losses need to be seen.

2. Head office and branch office expenses

128. These are generally regarded as part of the overhead. These costs can be dealt with in the price in a variety of ways. For example, they may be built into some or all of the prices against line items; they may be provided for in a lump sum; they may be dealt with in many other ways. One aspect, however, will be common to most, if not all, contracts. It will be the intention of the contractor to recover these costs through the price at some stage of the execution of the contract. Often the recovery has been spread through elements of the price, so as to result in repayment through a number of interim payments during the course of the contract. Where this

has been done, it may be said that these costs have been amortised. This factor is relevant to the question of double-counting (see paragraph 131, infra).

129. If therefore any part of the price of the works has been paid, it is likely that some part of these expenses has been recovered. Indeed, if these costs have been built into items which are paid early, a substantial part or even all of these costs may have been recovered.

130. If these items were the subject of an advance payment, again they may have been recovered in their entirety at an early stage of the project. Here of course there is an additional complication, since the advance payments will be credited back to the employer - see paragraph 70, supra - during the course of the work. In this event, the Panel is thrown back onto the question of where in the contractor's prices payment for these items was intended to be.

131. In all these situations, it is necessary to avoid double-counting. By this the Panel means the situation where the contractor is specifically claiming, as a separate item, elements of overhead which, in whole or in part, are also covered by the payments made or claims raised for work done.

132. The same applies where there are physical losses at a branch or indeed a site office or camp. These losses are claimable, if claimable at all, as loss of tangible assets.

3. Loss of profits on a particular project

133. Governing Council decision 9, paragraph 9, provides that where "continuation of the contract became impossible for the other party as a result of Iraq's invasion and occupation of Kuwait, Iraq is liable for any direct loss the other party suffered as a result, including lost profits".

134. As will be seen from the observations at paragraphs 119 to 127, supra, the expression "lost profits" is an encapsulation of quite a complicated concept. In particular, it will be appreciated that achieving profits or suffering a loss is a function of the risk margin and the actual event.

135. The qualification of "margin" by "risk" is an important one in the context of construction contracts. These contracts run for a considerable period of time; they often take place in remote areas or in countries where the environment is hostile in one way or another; and of course they are subject to political problems in a variety of places - where the work is done; where materials equipment or labour have to be procured; and along supply routes. The surrounding circumstances are thus very different and generally more risk prone than is the case in the context of, say, a contract for the sale of goods.

136. In the view of the Panel it is important to have these considerations in mind when reviewing a claim for lost profits on a major construction project. In effect one must review the particular project for what might

be called its "loss possibility". The contractor will have assumed risks. He will have provided a margin to cover these risks. He will have to demonstrate a substantial likelihood that the risks would not occur or would be overcome within the risk element so as to leave a margin for actual profit.

137. This approach, in the view of the Panel, is inherent in the thinking behind paragraph 5 of Governing Council decision 15. This paragraph expressly states that a claimant seeking compensation for business losses such as loss of profits, must provide "detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.

138. In the light of the above analysis, and in conformity with the two decisions cited above, this Panel requires the following from those construction claimants that seek to recover for lost profits. First, the phrase "continuation of the contract" imposes a requirement on the claimant to prove that it had an existing contractual relationship at the time of the invasion. Second, the provision requires the claimant to prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. This provision indicates a further requirement that profits should be measured over the life of the contract. It is not sufficient to prove that there would have been a "profit" at some stage before the completion of the project. Such a proof would only amount to a demonstration of a temporary credit balance. This can even be achieved in the early stages of a contract, for example where the pricing has been "front-loaded" for the express purpose of financing the project. Instead, the claimant must lodge sufficient and appropriate evidence to show that the contract would have been profitable as a whole.

4. Loss of profits for future projects

139. Some claimants say they would have earned profits on future projects, not let at the time of Iraq's invasion and occupation of Kuwait. Such claims are of course subject to the sorts of considerations set out by the Panel in its review of claims for lost profits on individual projects. In addition, it is necessary for such a claimant to overcome the problem of remoteness. How can a claimant be certain that it would have won the opportunity to carry out the projects in question? If there was to be competitive tendering, the problem is all the harder. If there was not to be competitive tendering, what is the basis of the assertion that the contract would have come to the claimant?

140. Accordingly, in the view of the Panel, for such a claim to warrant a recommendation, it is necessary to demonstrate by sufficient documentary and other appropriate evidence a history of successful (i.e., profitable) operation, and a state of affairs which warrants the conclusion that the hypothesis that there would have been future profitable contracts is well founded. Among other matters, it will be necessary to establish a picture of the assets that were being employed so that the extent to which those assets would continue to be productive in the future can be determined. Balance sheets for previous years will have to be produced, along with

relevant strategy statements or like documents which were in fact utilised in the past. The current strategy statement will also have to be provided. In all cases, the Panel will be looking for contemporaneous documents rather than ones that have been formulated for the purpose of the claim; although the latter may have a useful explanatory or demonstrational role.

141. Such evidence is often difficult to obtain; and accordingly in construction cases such claims will only rarely be successful. And even where there is such evidence, the Panel is likely to be unwilling to extend the projected profitability too far into the future. The political exigencies of work in a troubled part of the world are too great to justify looking many years ahead.

C. Loss of monies left in Iraq

1. Funds in bank accounts in Iraq

142. Numerous claimants sought to recover compensation for funds on deposit in Iraqi banks. Such funds were of course in Iraqi Dinars and were subject to exchange controls.

143. The first problem with these claims is that it is often not clear that there will be no opportunity in the future for the claimant to have access to and to use such funds. Indeed, many claimants, in their responses to interrogatories or otherwise have modified their original claims to remove such elements, as a result of obtaining access to such funds after the initial filing of their claim with the Commission.

144. Second, for such a claim to succeed it would be necessary to establish that in the particular case, Iraq would have permitted the exchange of such funds into hard currency for the purposes of export. For this, appropriate evidence of an obligation to this effect on the part of Iraq is required. Furthermore, the Panel notes that the decision to deposit funds in banks located in particular countries is a commercial decision, which a corporation engaged in international operations is required to make. In making this decision, a corporation would normally take into account the relevant country or regional risks involved.

145. In the claims the subject of this instalment, the Panel finds that the causal link in respect of this loss item is not direct. Consequently, the Panel has concluded that the claim for loss of use in this regard is speculative and not compensable by this Commission.

146. Turning from the particular to the general, the Panel, in analysing these claims has come to the conclusion that, in most cases, it will be necessary for a claimant to demonstrate (in addition to such matters as loss and quantum) that:

(a) the relevant Iraqi entity was under a contractual or other specific duty to exchange those funds for convertible currencies;

(b) Iraq would have permitted the transfer of the converted funds out of Iraq; and

(c) this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

147. Absent proof of these aspects of the matter, it is difficult to see how the claimant can be said to have suffered any "loss". In such circumstances, the Panel will have been unable to recommend compensation.

2. Petty cash

148. Exactly the same considerations apply to claims for petty cash left in Iraq in Iraqi Dinars. These monies had been left in the offices of the claimant when it departed from Iraq. The circumstances in which the money had been left behind varied somewhat; and the situation which thereafter obtained also varied - some claimants contending that they had returned to Iraq but the monies were gone; and others being unable to return to Iraq and establish the position. In these different cases, the principle seems to the Panel to be the same. These were amounts of money which were available to meet the day to day expenses of the claimant in Iraq. Accordingly, absent evidence of the same matters as are set out in paragraph 146, supra, such losses are not compensable.

3. Customs deposits

149. In the Panel's understanding, these sums are paid, nominally at least, as a fee for permission to effect a temporary importation of plant, vehicles or equipment. The recovery of these deposits is dependent on obtaining permission to export the relevant plant, vehicles and equipment.

150. In the Panel's understanding, such permission was hard to obtain prior to Iraq's invasion and occupation of Kuwait. Accordingly, although defined as a temporary exaction, it was often permanent in fact, and no doubt contractors experienced in the subtleties of working in Iraq made suitable allowances. And no doubt they were able to, or expected to, recover these exactions through payment for work done. Once the invasion and occupation of Kuwait had occurred, obtaining such permission to export became appreciably harder. Indeed, given the trade embargo, a necessary element would have been the specific approval of the Security Council.

151. In the premises, it seems to the Panel that claims to recover these duties need to be supported by sufficient evidentiary material, going to the issue of whether, but for Iraq's invasion and occupation of Kuwait, such permission would, in fact or on a balance of probabilities, have been forthcoming.

152. Absent such evidence and leaving aside any question of double-counting, (see paragraph 131, supra), the Panel is unlikely to be able to make any positive recommendations for compensating unrecovered customs deposits made for plant, vehicles and equipment used at construction projects in Iraq.

D. Tangible property

153. With reference to losses of tangible property located in Iraq, decision 9 provides that where direct losses were suffered as a result of Iraq's invasion and occupation of Kuwait with respect to tangible assets, Iraq is liable for compensation (decision 9, paragraph 12). Typical actions of this kind would have been the expropriation, removal, theft or destruction of particular items of property by Iraqi authorities. Whether the taking of property was lawful or not is not relevant for Iraq's liability if it did not provide for compensation. It furthermore provides that in a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from Iraq's invasion and occupation (decision 9, paragraph 13).

154. Many of the construction claims that come before this Panel are for assets that were confiscated by the Iraqi authorities in 1992 or 1993. Here the problem is one of causation. By the time of the event, the invasion and occupation of Kuwait was over. Liberation was a year or more earlier. Numerous of the claimants had managed to obtain access to their sites to establish the position that obtained at that stage. In the cases the subject of this paragraph, the assets still existed. However, that initially satisfactory position was then overtaken by a general confiscation of assets by Iraqi authorities. While it sometimes seems to have been the case that this confiscation was triggered by an event which could be directly related to Iraq's invasion and occupation of Kuwait, in the vast majority of the cases that the Panel has seen, this was not the case. It was simply the result of a decision on the part of the authorities to take over these assets. The Panel has difficulty in seeing how these losses were caused by Iraq's invasion and occupation of Kuwait. On the contrary, it appears that they stem from an wholly independent event and accordingly are outside the jurisdiction of the Commission.

E. Payment or relief to others

155. Paragraph 21(b) of decision 7 specifically provides that losses suffered as a result of "the departure of persons from or their inability to leave Iraq or Kuwait" are to be considered the direct result of Iraq's invasion and occupation of Kuwait. Consistent with decision 7, therefore, the Panel finds that evacuation and relief costs incurred in assisting employees in departing from Iraq are compensable to the extent proven.

156. Paragraph 22 of Governing Council decision 7 provides that "payments are available to reimburse payments made or relief provided by corporations or other entities to others - for example, to employees, or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

157. The "E2" Panel has found this to mean that where a claimant has proven that a payment was made, as a form of relief or otherwise, in connection with one of the acts or consequences described in paragraph 21 of decision 7, then such a payment is compensable by the Commission.

158. The "E3" Panel found that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are compensable to the extent that the costs are proven by the claimant. Compensable costs consist of "temporary and extraordinary expenses" related to the repatriation, including items such as transportation costs, lodging and food while in transit.

159. Accordingly, this Panel finds that the costs associated with evacuating and repatriating employees between 2 August 1990 and 2 March 1991 are compensable to the extent that such costs are proven by the claimant and are reasonable in the circumstances. Urgent temporary liabilities and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation, are in principle, compensable.

160. Many claimants did not provide a documentary trail detailing to perfection the expenses incurred in caring for their personnel and transporting them (and, in at least one instance, the employees of other companies who were stranded) out of a theatre of hostilities.

161. In these cases the Panel considered it appropriate to accept a level of documentation consistent with the practical realities of a difficult, uncertain and often hurried situation, taking into account the concerns necessarily involved. The loss sustained by claimants in these situations is the very essence of the direct loss suffered which is stipulated by Security Council resolution 687 (1991). Accordingly, the Panel used its best judgement, after considering all relevant reports and the material at its disposal, to arrive at an appropriate figure.

162. The importance of recognising the laudable concerns of companies fulfilling their responsibilities of assisting their staff out of an hostile environment can never be overemphasised.

V. ALPHA PROFESSIONAL SERVICES PTY. LTD.

163. Alpha Professional Services Pty. Ltd. ("Alpha"), is a proprietary limited company incorporated in Australia. Alpha seeks compensation in the total amount of US$8,094,239 (KD 2,339,235) for contract losses (KD 2,166,535), loss of tangible property (KD 165,000) and payment or relief to others (KD 7,700) incurred in its capacity as a sub-contractor engaged to work on two projects in Kuwait.

164. Alpha did not submit a statement of claim. However, Alpha provided documents entitled "Form of Agreement" said to be related to its claim for contract losses. In both documents, Alpha is described as "agent" after the Contractor's name.

165. In support of its claim for tangible property losses (loss of "razor bladed barb wire, with installation accessories"), Alpha provided a copy of a police report dated 29 October 1990 issued by the Alnida police station in Iraq. The report identifies the name of the complainant only. It does not identify the materials in question or state what happened to them.

166. Alpha provided no information or documentation in support of its claim for payment or relief to others.

167. The Panel finds that Alpha did not submit sufficient information or documentation to support its asserted losses.

168. Based on its findings regarding Alpha's claim, the Panel recommends no compensation.

VI. TECHNOCON LIMITED

169. Technocon Limited ("Technocon"), a company incorporated in the People's Republic of Bangladesh, is a general contractor on construction projects. At the time of Iraq's invasion of Kuwait, it was involved in providing labour to three construction projects in Iraq as well as general contracting work on projects in Kuwait. Technocon seeks compensation in the amount of US$11,386,640 (modified from the original claim in the amount of US$12,466,308) for contract losses, loss of profits, loss of tangible property, payment or relief to employees, and other financial losses.

A. Contract losses

1. Facts and contentions

170. Technocon seeks compensation in the amount of US$2,350,739 (ID 732,571) for contract losses allegedly incurred on three projects in Iraq. The claim is for unpaid receivable bills certified by the Government of Iraq (US$2,250,602 = ID 701,365), unpaid receivable bills not certified by the Government of Iraq (US$42,595 = ID 13,274) and unpaid deposits with others ("earnest money" and retention money) (US$57,542 = ID 17,932).

171. The employer on the Al-Naseem Project and the Al-Hamurabi Project was the Al-Fao General Establishment acting under the authority of the Ministry of Industry and Military Industrialisation of the Republic of Iraq. The employer on the Nassar Establishment for Mechanical Industries Project was the Ministry of Industry and Military Industrialisation. Technocon provided no information about the nature of the projects.

172. Technocon provided copies of the project contracts entered into with the Iraqi employers. The contracts detail the type of labour and the number of workers to be provided by Technocon as well as the monthly amount to be paid to Technocon in respect of the labour provided by it.

173. The claim for unpaid retention moneys relates to projects in Iraq that were completed long before Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

(a) Unpaid receivable bills (certified)

174. Technocon seeks compensation in the amount of US$2,250,602 (ID 701,365) for unpaid receivable bills. The claim is for work performed on the Al-Naseem Project between April and September 1990, work performed on the Al-Hamurabi Project between January and August 1990 and September and October 1990 and work performed on the Nassar Establishment for Mechanical Industries Project in November 1989 and between January and September 1990.

175. The Panel finds that the Al-Fao General Establishment and the Ministry of Industry and Military Industrialisation of the Republic of Iraq are agencies of the State of Iraq.

176. The supporting documentation provided by Technocon indicates that the performance that created the debts in question occurred between November 1989 and October 1990. The Panel, therefore, finds that the contract losses alleged by Technocon relate partly to work that was performed prior to 2 May 1990.

177. The claim for contract losses relating to work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 20 to 22, only the contract losses relating to work performed subsequent to 2 May 1990 are compensable. From the documentation provided by Technocon, the Panel was able to identify the value of the work performed subsequent to 2 May 1990 as ID 424,774, and, therefore, recommends compensation in this amount.

(b) Unpaid receivable bills (uncertified)

178. Technocon seeks compensation in the amount of US$42,595 (ID 13,274) for unpaid receivable bills. The claim is for work performed on the Al-Naseem Project, the Al-Hamurabi Project and the Nassar Establishment for Mechanical Industries Project. Technocon did not state the dates of performance of the work.

179. The Panel finds that Technocon did not provide sufficient evidence of its stated loss. The bills provided by Technocon were not certified by the Iraqi employer and are not supported by any other evidence. Accordingly, the Panel recommends no compensation.

(c) Unpaid retention money

180. Technocon seeks compensation in the amount of US$57,542 (ID 17,932) for unpaid "earnest monies" and retention money on projects in Iraq. "Earnest monies" is interpreted to include items such as security deposits and bank guarantees. The claim for retention money relates to the withholding of two unspecified amounts relating to personal income tax for 1990. No further explanation is given. The monies were allegedly withheld on construction projects completed long before Iraq's invasion of Kuwait.

181. In support of its claim for "earnest monies" and retention money, Technocon provided a schedule containing a breakdown of the amounts claimed. The schedule refers to a number of projects in Iraq. However, Technocon provided no sufficient explanation or evidence in support of its claim.

182. The Panel finds that Technocon did not provide sufficient evidence of its stated losses. Accordingly, the Panel recommends no compensation.

3. Recommendation for contract losses

183. The Panel recommends compensation in the amount of US$1,365,833 (ID 424,774).

B. Loss of profits

184. Technocon seeks compensation in the amount of US$5,139,921 (ID 1,601,776) for loss of profits allegedly caused by the early termination of its activities in Iraq as a result of Iraq's invasion and occupation of Kuwait. Technocon calculated its loss of profits by using anticipated and historical profitability percentages in order to project its profits for the years 1991 to 1994.

185. Technocon supplied a substantial amount of information in respect of its performance in Iraq prior to the invasion and occupation of Kuwait. It sought reimbursement for profits over the years 1991 to 1994. There is no evidence of any contract to which Technocon was a party which would justify a recommendation of compensation for loss of profits after, at the latest, mid-1991. In respect of the period up to the middle of 1991, the Panel is satisfied that the evidence supports a claim for ID 190,000.

186. Accordingly, the Panel recommends compensation in the amount of US$610,932 (ID 190,000).

C. Loss of tangible property

1. Facts and contentions

187. Technocon seeks compensation in the amount of US$2,112,560 for loss of tangible assets from project sites in Iraq and Kuwait.

2. Analysis and valuation

(a) Losses in Iraq

188. Technocon seeks compensation in the amount of US$362,393 (ID 112,934) for loss of tangible assets in Iraq, including tangible assets allegedly seized by the Government of Iraq ("approved by the Government of Iraq") (US$232,186 = ID 72,357) and tangible assets allegedly forcibly donated to the Government of Iraq ("taken by client") (US$130,207 = ID 40,577).

(b) Losses in Kuwait

(i) Contents of labour camp in Kuwait

189. Technocon seeks compensation in the amount of US$1,073,340 (modified from the original claim in the amount of US$1,278,990) for the contents of a labour camp in Kuwait that were allegedly stolen during Iraq's occupation of Kuwait. The claim is for equipment and other assets, such as caravans, beds, air conditioners, utensils and furniture. Technocon stated that,

when it returned to the campsite after the liberation of Kuwait, it found nothing left.

(ii) Loss of construction equipment and vehicles in Kuwait

190. Technocon seeks compensation in the amount of US$651,409 (modified from the original claim in the amount of US$913,692) for loss of construction equipment and vehicles in Kuwait that were allegedly seized by Iraqi forces or destroyed during Iraq's occupation of Kuwait. The claim is for construction equipment of various types, including concrete mixers, dump trucks and rollers, and road vehicles, including cars and mini-buses.

(iii) Loss of equipment from Kuwaiti branch office

191. Technocon seeks compensation in the amount of US$25,418 (modified from the original claim in the amount of US$44,568) for loss of equipment located at its branch office in Kuwait, which was allegedly destroyed after the office was looted and burned down during Iraq's occupation of Kuwait. The claim is for office equipment, including fax and telex machines, tables, chairs, typewriters and an iron safe.

3. Recommendation for loss of tangible property

(a) Losses in Iraq

192. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation.

(b) Losses in Kuwait

193. In support of its claim, Technocon provided a substantial amount of information, including schedules evidencing information such as the following: date of acquisition, age at time of acquisition, original value as at 31 December 1990, rate of depreciation applied and book value as at 31 December 1990. In light of the evidence provided, the Panel finds that an appropriate amount of compensation to be US$1,038,062 (KD 300,000).

D. Payment or relief to others

1. Facts and contentions

194. Technocon seeks compensation in the amount of US$994,066 (ID 309,785) for payment and relief provided to its employees.

2. Analysis and valuation

(a) Evacuation costs

195. Technocon seeks compensation in the amount of US$676,498 (ID 210,820) for costs allegedly incurred in evacuating 1,202 of its employees from Iraq

by bus to Amman. The claim is for the cost of hiring buses, visa fees, food and emergency medicine.

196. In support of its claim for transportation costs, Technocon provided a list of the 1,202 employees and their respective job descriptions, passport numbers and dates of departure. Technocon also provided a copy of an agreement with a Jordanian transport company for the provision of buses. The agreement provides for an agreed lump-sum amount to be paid for each trip. According to the documentation provided by Technocon, a total of 20 trips were undertaken by bus.

197. The evidence provided by Technocon established that some 20 bus trips took place over a substantial period of time. Technocon provided no information concerning, or evidence in support of, its claim for food and emergency medicine. The Panel accepts that in the circumstances which pertained at the time, the kind of documentation and the amount of documentation that would be available to support subsistence costs and travel costs is likely to be limited. Taking into account those circumstances and the general credibility of the claim overall, the Panel has concluded upon a figure of ID 175,000.

(b) Contractual payments to employees

198. Technocon seeks compensation in the amount of US$317,568 (ID 98,965) for contractual payments made to 570 employees upon their return to Bangladesh in September 1990. The payments appear to be a form of severance pay for the premature termination of their employment contracts. Technocon stated that it was contractually obliged to compensate its employees for the one month notice period that it was unable to respect in terminating their employment contracts.

199. While Technocon stated that the employment contracts required it to pay its repatriated employees one month's salary, Technocon submitted no evidence to prove the existence of this requirement. The copies of the employment contracts provided by Technocon do not contain any provision that would appear to impose such an obligation on Technocon. Accordingly, the Panel recommends no compensation.

3. Recommendation for payment or relief to others

200. The Panel recommends compensation in the amount of US$562,701 (ID 175,000).

E. Other financial losses

1. Facts and contentions

201. Technocon seeks compensation in the amount of US$789,354 (ID 245,990) for other financial losses, including pre-paid rent and interest on a bank loan.

202. In its original claim submission, Technocon also sought compensation in the amount of US$528,408 (ID 164,670) for the loss of cash held at its office in Iraq and money deposited with Iraqi banks. Technocon later withdrew its claim for this loss item, stating that it had been able to obtain the cash and the funds on deposit.

2. Analysis and valuation

(a) Pre-paid rent

203. Technocon seeks compensation in the amount of US$65,529 (ID 20,421) (modified from the original claim in the amount of US$129,706 (ID 40,421)) for pre-paid rent in relation to its Iraqi office and residential accommodation for its office staff.

204. Technocon stated that it was unable to use the office and residential accommodation during Iraq's occupation of Kuwait.

205. The Panel finds that pre-paid rent is not an expense that is chargeable to the employer on a project, but part of the overheads that a contractor uses to calculate the rates charged. Accordingly, the Panel recommends no compensation.

(b) Interest on bank loan

206. Technocon seeks compensation in the amount of US$723,825 (ID 225,569) for interest allegedly paid on a bank loan from 8 October 1990 to 30 June 1994.

207. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

3. Recommendation for other financial losses

208. The Panel recommends no compensation.

F. Summary of recommended compensation for Technocon

209. Based on its findings regarding Technocon's claim, the Panel recommends compensation in the amount of US$3,577,529. So far as relevant, the Panel finds the date of loss to be 15 September 1990.

VII. MENDES JUNIOR S.A.

210. Mendes Junior SA, a company incorporated in Brazil, and Mendes Junior International Company, a company incorporated in the Grand Cayman Islands, (together "Mendes") are associated companies. At the time of Iraq's invasion and occupation of Kuwait, they were working together on a joint venture basis as contractors on three construction projects in Iraq - the Baghdad to Akashat Railway Project (the "Railway Project"), the Expressway No. 1 Project and the Main Outfall Drain Project at Nassiriyah.

211. Mendes seeks compensation in the total amount of US$146,529,528 for contract losses, loss of profits, loss of tangible property, loss of real property, payment and relief provided to employees and interest.

212. It is helpful to begin with a chronology of Mendes' involvement with projects in Iraq. The first project was the Railway Project. Commencing in 1978, Mendes performed work on the Railway Project under a contract with the Iraqi Republic Railways. Mendes entered into several additional contracts with other Iraqi State organisations for subsequent work on the Railway Project, and the project was completed in 1986.

213. The second project was the Expressway No. 1 Project. In February 1981, Mendes entered into a contract with the Minister of Housing and Construction on behalf of the Government of Iraq. This contract provided for work to be completed within 36 months. However, the project was delayed after work stopped in 1987 allegedly due to hostilities between Iraq and Iran. At the time of Iraq's invasion of Kuwait, the only work that remained to be completed was the supply and erection of road signs, guard rails and fencing.

214. The third project was the Main Outfall Drain Project. The work to design and build this project was initially awarded to Mendes by the Iraqi State Commission for Irrigation and Reclamation in 1982, and the contract was signed in 1984. The project suffered many delays caused, firstly, by a dispute with the Iraqi employer concerning the final design submitted, and pumps supplied, for the project, and, secondly, after work was suspended in late 1987 allegedly due to hostilities between Iraq and Iran.

215. In June 1988, representatives of the Governments of Brazil and Iraq met in Baghdad to negotiate the recommencement of work on the Expressway No. 1 and the Main Outfall Drain Projects. This meeting resulted in the signing of a Memorandum of Understanding dated 19 June 1988. The Memorandum of Understanding set forth "financial and administrative measures as a final and comprehensive settlement of all pending issues and claims of Mendes". Although not a party to the Memorandum of Understanding, Mendes stated that it considered itself bound by the Memorandum of Understanding.

216. Under the terms of the Memorandum of Understanding, Iraq agreed to extend the period of the Expressway No. 1 Project by an additional two years from 15 May 1987, and the Main Outfall Drain Project by an additional three years from 22 August 1987. Iraq also agreed to pay the following

amounts to Mendes: (a) US$14,900,000 as final settlement of all claims in respect of work performed on the Railway Project; (b) US$16,100,000 (in respect of the release of retention money and "the latest measurement certificate") plus an amount to be calculated by the parties to reflect "difference of exchange rate" related to the Expressway No. 1 Project; and (c) US$10,300,000 in respect of the release of retention money on the Main Outfall Drain Project.

217. Also under the terms of the Memorandum of Understanding, Mendes was to repay Iraq the balance of the advance payments received by it in respect of the three projects. The amounts to be repaid and the dates for repayment were: (a) US$67,600,000 two years after signing a document confirming the Memorandum of Understanding, in the case of the Railway Project; (b) US$41,600,000 two years after the termination of the maintenance period of the Expressway No. 1 Project; and (c) US$22,200,000 two years after the termination of the maintenance period of the Main Outfall Drain Project.

218. In response to a request by the Panel for further information, Mendes stated that it has not repaid the advance payments to Iraq in accordance with the terms of the Memorandum of Understanding. After allowing for the amounts owed by Iraq to Mendes referred to in paragraph 216, Mendes retained a net surplus in respect of the projects.

219. Iraq requested work to be resumed on the Main Outfall Drain Project before any of the monies referred to in the Memorandum of Understanding were paid. In order to facilitate the remobilization of Mendes' resources in Iraq, the Government of Brazil provided the sum of US$45,000,000 to Mendes under a special loan agreement.

220. In August 1988, as part of a policy to expand the export of services to Iraq and pay for more imported crude oil, the Government of Brazil agreed to absorb Mendes' additional claims against Iraq for loss of profits on construction projects and unpaid work performed on the Expressway No. 1 Project and the Main Outfall Drain Project. Mendes stated that its claims against Iraq amounted to US$421,574,422. In July 1989, Mendes signed a credit agreement with the Banco do Brasil, acting on behalf of the Government of Brazil. Under the terms of this credit agreement, Mendes assigned these claims against Iraq to the Banco do Brasil, thereby leaving Mendes with no remaining right to assert any of these claims.

221. In March 1990, after further delays on the Main Outfall Drain Project had been experienced as a result of customs disputes, the Ministry of Trade of the Republic of Iraq granted Mendes an additional five month extension (until 22 September 1990) for the resumption of work on the Main Outfall Drain Project. Also at about this time, the Banco do Brasil reached agreement with the State Commission for Irrigation and Reclamation Projects to extend the financial agreement and to provide the credit facility until 22 September 1990 to enable the Main Outfall Drain Project to be completed.

222. At the end of July 1990, the parties finalised the credit facility to be provided to the State Commission for Irrigation and Reclamation Projects to enable the Expressway No. 1 Project to be completed.

223. Mendes stated that, shortly after the resumption of work on the Expressway No. 1 Project and the Main Outfall Drain Project, the work was interrupted by Iraq's invasion and occupation of Kuwait.

A. Contract losses

1. Facts and contentions

224. Mendes seeks compensation in the amount of US$18,081,674 for contract losses in respect of amounts allegedly paid to four sub-contractors and not reimbursed by the Iraqi employers.

225. The sub-contractors' costs for goods and services provided were invoiced in connection with the Baghdad to Akashat Railway Project, the Expressway No. 1 Project and the Main Outfall Drain Project. The Iraqi employers on the projects were the Railways Commission of the Republic of Iraq, in the case of the Baghdad to Akashat Railway Project, the Ministry for Housing and Construction of the Republic of Iraq, in the case of the Expressway No. 1 Project and the Iraqi State Commission for Irrigation and Reclamation Projects, in the case of the Main Outfall Drain Project.

2. Analysis and valuation

(a) Sub-contractor costs: Voith AG (Austria)

226. Mendes seeks compensation in the amount of US$6,225,426 for costs invoiced by its sub-contractor, Voith AG, Austria. Voith AG manufactured and supplied pumping equipment for the Main Outfall Drain Project. The amounts included in Mendes' claim are the cost of supply of the pumping equipment (US$6,002,126) and the cost of storage of the pumping equipment from August 1990 to December 1992 (US$223,300). Mendes stated that the pumping equipment was partially delivered to Iraq. The equipment that was not delivered to Iraq is still in storage in Bremen, Germany, and St Polten, Austria.

227. Voith AG invoiced Mendes for the cost of supply of the pumping equipment in two invoices dated 1 December 1988 and 30 November 1989.

(b) Sub-contractor costs: Voith SA (Brazil)

228. Mendes seeks compensation in the amount of US$3,238,472 for costs invoiced by its sub-contractor, Voith SA, Brazil. Voith SA and its Brazilian sub-contractor supplied hydro-mechanical and lifting equipment to the Main Outfall Drain Project.

229. Voith SA invoiced Mendes for the cost of supply of the equipment in invoices dated between November 1984 and October 1989.

(c) Sub-contractor costs: Thyssen AG (Germany) and Thyssen Sudamerica NV (Brazil)

230. Mendes seeks compensation in the amount of US$1,800,428 (DM 3,060,728) for costs invoiced by its sub-contractors, Thyssen AG, Germany, and Thyssen Sudamerica NV, Brazil. Thyssen AG and Thyssen Sudamerica SA were suppliers of fence materials and road signs for the Expressway No. 1 Project. The materials and road signs were manufactured in Germany and shipped to Brazil. Mendes did not indicate the date on which this shipment took place. It was intended that the materials be shipped to Iraq from Brazil. However, Mendes asserted that the planned shipment of the materials to Iraq did not take place due to Iraq's invasion and occupation of Kuwait.

(d) Sub-contractor costs: Leme Engenaharia (Brazil)

231. Mendes seeks compensation in the amount of US$6,817,348 for costs invoiced by its sub-contractor, Leme Engenaharia, Brazil. Leme Engenaharia carried out design work on the Main Outfall Drain Project.

232. Leme Engenaharia invoiced Mendes for the design work in invoices dated between July 1984 and November 1990.

3. Recommendation for contract losses

233. The Panel finds that Mendes failed to demonstrate the direct link between its stated losses and Iraq's invasion and occupation of Kuwait. Among other factors, the supply of the majority of equipment and services included in Mendes' claim took place well before Iraq's invasion and occupation of Kuwait. The Panel finds that the inability of Mendes to recover the amounts claimed from the Iraqi employers is not a loss directly caused by Iraq's invasion and occupation of Kuwait. In respect of the balance of the equipment and services, Mendes provided insufficient evidence to enable the Panel to make a determination. Accordingly, the Panel recommends no compensation.

B. Loss of profits

234. Mendes seeks compensation in the amount of US$30,825,038 for loss of profits in respect of the Main Outfall Drain Project. Mendes calculated its claim for loss of profits on an expected profit margin of 15 per cent. It applied this percentage to the incomplete portion of the works as at 2 August 1990, which Mendes alleged to be 68.16 per cent.

235. Mendes submitted its audited accounts for the years 1983 to 1990 as well as audited accounts for its Iraqi operations for the years 1983 to 1989. These accounts demonstrate that Mendes' gross profits percentages fluctuated wildly during this period because of the difficulties experienced by Mendes in obtaining settlement on outstanding amounts owed. By submitting its records for gross profits, Mendes has requested the Panel to ignore the financial costs and inherent risks in operating large construction projects in Iraq. The Panel is not inclined to accept this

invitation. Further, Mendes did not submit sufficient evidence to demonstrate the on-going profitability of the Main Outfall Drain Project.

236. Applying the approach taken with respect to loss of profits on a particular project set out in paragraphs 133 to 138, the Panel recommends no compensation.

C. Loss of tangible property

237. Mendes seeks compensation in the amount of US$69,242,505 for loss of tangible property, including plant, machinery and construction equipment kept at the Main Outfall Drain Project site (US$9,260,626), materials (US$50,452,125) and the destruction of its campsite at Nassiriyah (US$9,529,754).

238. On the assumption that all of Mendes' claims for loss of tangible property are valid and recoverable in the full amount, Mendes is still left with a net surplus. This is the result of the substantial advance payments in the total amount of US$131,400,000 paid to it in respect of the Railway Project, the Expressway No. 1 Project and the Main Outfall Drain Project. As stated in paragraph 217, supra, under the terms of the Memorandum of Understanding, Mendes was to repay Iraq these advance payments. Mendes has not repaid these monies. It, therefore, follows, that even after taking into account the amounts owed by Iraq to Mendes referred to in paragraph 216, supra, Mendes retained a net surplus which is substantially greater than Mendes' claim for tangible property losses.

239. The Panel finds that the advance payments would, for the main part, have been used by Mendes to purchase tangible assets to be used on the projects. In the circumstances, and applying the approach taken with respect to advance payments set out in paragraphs 68 to 71, there is no loss to Mendes in respect of tangible property for which the Panel can recommend compensation.

240. The Panel recommends no compensation.

D. Payment or relief to others

1. Facts and contentions

241. Mendes seeks compensation in the amount of US$3,406,611 for payment or relief to others, including expenses incurred in evacuating 229 of its employees from Iraq to Brazil (US$609,300), salary payments made to its employees between August 1990 and February 1991 (US$2,427,311) and general expenses incurred in securing the release of its employees and their families from Iraq (US$370,000).

2. Analysis and valuation

(a) Evacuation costs

242. Mendes seeks compensation in the amount of US$609,300 for expenses incurred in evacuating 229 of its employees from Iraq to Brazil from August to October 1990. The claim is for the cost of three charter flights that were specially arranged to evacuate its employees and other Brazilian nationals.

243. The Panel finds that the amount claimed for the charter flights is approximately twice the cost of individual scheduled tickets. This is an extraordinary expense that must be reduced by the normal costs of repatriation of its workforce. Applying the approach taken with respect to the compensability of claims for payment or relief to others set out in paragraphs 155 to 162, the Panel recommends compensation in the amount of US$456,975.

(b) Salary payments made to employees

244. Mendes seeks compensation in the amount of US$2,427,311 for salary payments made to its employees between August 1990 and February 1991. Mendes stated that it terminated the employment contracts of its staff upon their repatriation. Mendes' claim includes the contractual amounts paid to its employees due to early termination of their employment contracts. Mendes stated that it was contractually obliged to pay its employees for a 30 day period after their repatriation.

245. The Panel finds that the United States dollar element of the salaries for the period August 1990 to January 1991 and the Iraqi dinar element of the salaries for December and January 1991 are compensable. Accordingly, the Panel recommends compensation in the amount of US$1,343,398.

(c) General expenses

246. Mendes seeks compensation in the amount of US$370,000 for general expenses incurred in securing the release of its employees and their families from Iraq. The amount claimed includes the cost of telephone calls, meetings in Brazil and other administrative costs in negotiations with Iraq aimed at obtaining exit visas.

247. Mendes provided no evidence in support of its claim. The Panel finds that Mendes did not provide sufficient evidence of its stated losses. Accordingly, the Panel recommends no compensation.

3. Recommendation for payment or relief to others

248. The Panel recommends compensation in the amount of US$1,800,373.

E. Summary of recommended compensation for Mendes

249. Based on its findings regarding Mendes claim, the Panel recommends compensation in the amount of US$1,800,373. The Panel finds the date of loss to be 15 September 1990.

VIII. TECHNOIMPORTEXPORT AD

250. Technoimportexport AD ("Technoimportexport") is a Bulgarian foreign trade association engaged in construction and engineering works abroad as well as the import and export of machinery. At the time of Iraq's invasion of Kuwait, Technoimportexport was engaged as a contractor on a petroleum products storage project in Kuwait and on two projects for the supply of brick production flow lines in Iraq. Technoimportexport seeks compensation in the total amount of US$17,488,097 for contract losses, loss of profits, loss of tangible property and losses in connection with a performance bond, allegedly incurred in connection with the project in Kuwait.

A. Contract losses

1. Facts and contentions

251. Technoimportexport seeks compensation in the amount of US$13,632,355 for contract losses.

252. On 21 November 1987, Technoimportexport entered into a contract with the Kuwaiti National Petroleum Company (the "Kuwaiti employer") for the design, supply, construction and maintenance of the Local Marketing Ahmadi Depot in Kuwait (the "Project"). The lump sum price for the works agreed under the contract was KD 3,983,172. The contract period was 24 months. On 24 January 1988, the parties entered into an addendum to the contract. The addendum related to the supply, construction, erection and maintenance of all works related to the temporary facilities for the Project. The contract sum was increased to KD 4,086,922 to take account of the additional works. The additional works were to be completed within the contract period provided for under the original contract.

253. Technoimportexport stated that the works on the Project were continuing as at 2 August 1990 and were suspended due to Iraq's invasion of Kuwait. However, an interim request for extension of time and additional monies dated April 1990 addressed to the Kuwaiti employer provided by Technoimportexport indicates that the Project was delayed due to garbage on the site and soil conditions that were different from those advised by the Kuwaiti employer.

2. Analysis and valuation

(a) "Additional works presented to the Kuwait employer"

254. Technoimportexport seeks compensation in the amount of US$1,154,815 for "additional works presented to the Kuwait employer". The claim relates to costs incurred in respect of additional soil penetration tests, an additional height requirement for tanks and additional work carried out for the removal of garbage found to have been buried under site soil.

255. The Panel finds that Technoimportexport did not provide sufficient evidence of its stated loss. Moreover, Technoimportexport did not explain the direct link between its inability to recover the costs incurred in

respect of additional works on the Project and Iraq's invasion and occupation of Kuwait. Technoimportexport provided no evidence that the Kuwaiti employer was rendered insolvent as a consequence of the invasion and occupation. Accordingly, the Panel finds that Technoimportexport failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

(b) "Additional works not presented to the Kuwait employer"

256. Technoimportexport seeks compensation in the amount of US$1,076,620 for "additional works not presented to the Kuwait employer". The claim relates to costs incurred in respect of additional changes in drawings made in the course of designing the Project works.

257. Despite a request in the Questions to the Claimant to provide full documentation in respect of this loss item, Technoimportexport provided no further documentation or explanations.

258. The Panel finds that Technoimportexport did not provide sufficient evidence of its stated loss. Moreover, Technoimportexport did not explain the direct link between its inability to recover the costs incurred in respect of additional works on the Project and Iraq's invasion and occupation of Kuwait. Technoimportexport provided no evidence that the Kuwaiti employer was rendered insolvent as a consequence of the invasion and occupation. Accordingly, the Panel finds that Technoimportexport failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

(c) Unpaid invoices for the supply of a computer system by a sub-contractor

259. Technoimportexport seeks compensation in the amount of US$1,025,000 in respect of unpaid invoices for the supply of a computer system by a sub-contractor. Technoimportexport stated that the computer system, which comprised HP 825 computers and a control suite destined for the Project, was paid for in advance and was stored by Technoimportexport's sub-contractor in the United Kingdom. The computer system was never delivered to Kuwait. Technoimportexport stated that the computer system is now obsolete and is not able to be resold or used on other projects. Technoimportexport claims for the cost of the computer system as well as storage charges relating to the storage of the computer system in the United Kingdom for the period 1 February 1990 to 30 June 1993.

260. In support of its claim, Technoimportexport provided invoices for the storage of the computer system. However, Technoimportexport provided no evidence that it paid for the costs of storage of the computer system. Technoimportexport provided no evidence of any attempts made to sell the computer system in mitigation of its loss. Accordingly, the Panel recommends no compensation.

(d) "Expected cancellation charges from sub-contractors"

261. Technoimportexport seeks compensation in the amount of US$725,920 for "expected cancellation charges for unpaid equipment from sub-contractors". The claim is for payments expected to be made to suppliers in relation to orders that were cancelled due to the suspension of work on the Project. Technoimportexport stated that it had made no payments for cancelled orders and it had received no requests for payment from sub-contractors.

262. The Panel finds that, since Technoimportexport has made no payments and has received no requests for payment from sub-contractors, Technoimportexport has incurred no loss in respect of "expected cancellation charges for unpaid equipment from sub-contractors". Accordingly, the Panel recommends no compensation.

(e) Sub-contractor claims

263. Technoimportexport seeks compensation in the amount of US$9,650,000 (KD 2,473,027) in respect of claims made against Technoimportexport by its sub-contractors. This loss item relates to claims made by two Kuwaiti sub-contractors (the "first and second Kuwaiti sub-contractors") as well as certain other unspecified sub-contractors.

264. Technoimportexport provided some information about the claims made by the first and second Kuwaiti sub-contractors, but did not provide any information concerning the remaining sub-contractors.

265. Technoimportexport stated that the first Kuwaiti sub-contractor commenced arbitration proceedings against it after Technoimportexport cancelled the sub-contract on 26 October 1989. Technoimportexport provided a copy of the final award of the International Court of Arbitration dated 11 June 1996. In the award, the International Court of Arbitration found Technoimportexport to be in breach of the sub-contract by terminating the sub-contract.

266. In respect of the claim allegedly made by the first Kuwaiti sub-contractor, the Panel finds that Technoimportexport did not explain the direct link between its stated loss and Iraq's invasion and occupation of Kuwait. On the information provided by Technoimportexport, the sub-contract with the first Kuwaiti sub-contractor was cancelled prior to Iraq's invasion of Kuwait. Accordingly, the Panel is unable to determine that the claim made by the first Kuwaiti sub-contractor was a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that Technoimportexport did not provide sufficient evidence of its stated losses in relation to claims allegedly made by the second Kuwaiti sub-contractor and the other unspecified sub-contractors.

267. The Panel recommends no compensation.

3. Recommendation for contract losses

268. The Panel recommends no compensation.

B. Loss of profits

269. Technoimportexport seeks compensation in the amount of US$960,000 for "missed benefits and profits" following the evacuation of its personnel from Kuwait.

270. The Panel finds that Technoimportexport failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 133 to 138. Accordingly, the Panel recommends no compensation.

C. Loss of tangible property

271. Technoimportexport seeks compensation in the amount of US$1,330,000 for loss of tangible property, including equipment delivered from Bulgaria (US$380,000) and equipment, cars, trucks and office equipment (US$950,000).

272. The Panel finds that Technoimportexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Kuwait on 2 August 1990. Accordingly, the Panel recommends no compensation.

D. Payment or relief to others

273. Technoimportexport seeks compensation in the amount of US$197,000 for costs incurred in respect of the evacuation of 88 employees from Kuwait to Bulgaria during the period 19 to 21 August 1990. Technoimportexport stated that, following Iraq's invasion of Kuwait, Technoimportexport withdrew its staff from the Project site and, using trucks supplied by a Bulgarian transport company, transported them to Jordan. Some of the employees flew back to Bulgaria from Jordan and others returned to Bulgaria in private cars. Technoimportexport stated that the employees' contracts were terminated upon their return to Bulgaria.

274. In support of its claim, Technoimportexport provided a list of 88 employees working on the Project during the month of August 1990, together with details of their monthly salaries. Technoimportexport also provided a declaration of one employee whose contract was terminated upon his return to Bulgaria.

275. While one would not expect a very detailed level of documentary substantiation for the costs incurred in moving people out of a theatre of war, nonetheless, this claim is deficient in supporting records. However, the Panel recognises the importance of companies accepting responsibility for assisting their staff out of such a situation and recommends the sum of $250 per person for the 88 employees of Technoimportexport. Therefore, the Panel recommends compensation in the amount of US$22,000.

E. "Performance bond"

276. Technoimportexport seeks compensation in the amount of US$1,368,742 for losses in connection with a performance bond allegedly issued in

respect of the Project. Technoimportexport failed to explain the nature of its loss and how it arose.

277. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, and by reason of the lack of supporting documentation, the Panel recommends no compensation.

F. Summary of recommended compensation for Technoimportexport

278. Based on its findings regarding Technoimportexport's claim, the Panel recommends compensation in the amount of US$22,000. The Panel finds the date of loss to be 21 August 1990.

IX. MECHEL CONTRACTORS (OVERSEAS) LTD.

279. Mechel Contractors (Overseas) Ltd. ("Mechel"), a Cypriot-registered mechanical and electrical engineering company, was engaged to instal electrical and telephone networks for the Al-Kadiysa and Al-Bakr housing projects in Mahmudiya, Iraq.

280. Mechel seeks compensation in the total amount of US$11,166,672 for contract losses, interest on contract losses and loss of profits in connection with the two projects in Iraq. For the reasons stated in paragraph 37, the Panel makes no recommendation with respect to Mechel's claim for interest.

A. Contract losses

281. Mechel seeks compensation in the amount of US$5,226,264 for contract losses.

282. Mechel entered into two contracts dated 30 April and 12 July 1981 with the State Establishment for the Implementation of Housing Projects (the "Iraqi employer") pursuant to which it was engaged to instal electrical and telephone networks for the Al-Kadiysa and Al-Bakr housing projects in Mahmudiya, Iraq. Mechel stated that it completed work on both projects on 29 April 1986.

283. However, Mechel failed to provide copies of the project contracts, applications for payment, approved payment certificates, interim certificates, progress reports, account invoices and details of the actual payments received.

284. The Panel finds that Mechel did not provide sufficient evidence of its stated losses. Accordingly, the Panel recommends no compensation.

B. Loss of profits

285. Mechel seeks compensation in the amount of US$5,000,000 for loss of profits.

286. The Panel finds that Mechel failed to fulfil the evidentiary standard for loss of profits claims set out in paragraphs 133 to 138. Accordingly, the Panel recommends no compensation.

C. Summary of recommended compensation for Mechel

287. Based on its findings regarding Mechel's claim, the Panel recommends no compensation.

X. STROJEXPORT COMPANY LIMITED

288. Strojexport Company Limited ("Strojexport"), a company incorporated in the Czech Republic, is involved in the import and export of construction and building equipment and the provision of geological services, design work and related services. It seeks compensation in the total amount of US$99,525,690 for contract losses and interest, loss of tangible property, payment or relief to others and other financial losses allegedly caused as a direct result of Iraq's invasion and occupation of Kuwait.

289. At the time of Iraq's invasion of Kuwait, Strojexport was engaged as a contractor on five projects in Iraq (the North Rumaila Oil Fields Project, the West Qurna Oil Fields Project, the Hamrin Oil Fields Project, the Derbendikhan Tunnel Project and the Abu Ghraib Irrigation Project). It was also engaged on two projects in Kuwait (the Water Drilling and Wells Project and the provision of engineering services for the Ministry of Electricity) and one project in Jordan (the Reconstruction of the Road from Azraq to the Iraqi Border).

A. Contract losses in Iraq

1. Facts and contentions

290. Strojexport seeks compensation in the amount of US$69,032,156 for contract losses in Iraq.

291. Strojexport also seeks compensation for interest on the unpaid contractual amounts. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) North Rumaila Oil Fields Project

292. Strojexport seeks compensation in the amount of US$2,229,318 for the unpaid foreign currency portion of invoices issued for work performed. The project contract between Strojexport and the Iraqi National Oil Company (later renamed the Southern Oil Company) was dated 19 December 1979. The project contract provided for the drilling of a number of oil wells in oil fields situated in North Rumaila in southern Iraq. Strojexport stated that the drilling under the project contract was completed in March 1990.

293. Under the project contract, payment for the work performed was deferred for either 12 or 36 months.

294. In support of its claim, Strojexport provided a copy of the project contract and its sales ledgers for the project up to 1990. Strojexport also provided copies of invoices dated between February 1988 and March 1990 for work performed between those dates.

295. The Panel finds that the Iraqi National Oil Company is an agency of the State of Iraq. The Panel finds that the contract losses alleged by

Strojexport relate entirely to work that was performed prior to 2 May 1990. The claim for contract losses under the contract for the North Rumaila Oil Fields Project is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(b) West Qurna Oil Fields Project

296. Strojexport seeks compensation in the amount of US$1,475,749 for the unpaid foreign currency portion of invoices issued for work performed. The project contract between Strojexport and the Southern Oil Company was dated 28 January 1989. The project contract provided for work to be performed on oil boreholes situated in West Qurna in southern Iraq. Strojexport stated that work on the project was ongoing at the time of Iraq's invasion and occupation of Kuwait.

297. Under the project contract, payment for the work performed was deferred for periods ranging from 24 to 36 months.

298. The Panel finds that the Southern Oil Company is an agency of the State of Iraq. The supporting documentation provided by Strojexport indicates that the performance that created the debts in question occurred between August 1989 and August 1990. The Panel, therefore, finds that the contract losses alleged by Strojexport relate partly to work that was performed prior to 2 May 1990.

299. The claim for contract losses relating to work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, only the contract losses relating to work performed subsequent to 2 May 1990 are compensable. From the documentation provided by Strojexport, the Panel was able to identify the value of the work performed subsequent to 2 May 1990 and recommends compensation in the amount of US$461,019.

(c) Hamrin Oil Fields Project

300. Strojexport seeks compensation in the amount of US$1,866,653 for the unpaid foreign currency portion of invoices issued for work performed. The project contract between Strojexport and the North Oil Company was dated 25 January 1989. The project contract provided for the drilling of oil wells in Hamrin in northern Iraq. Strojexport stated that work on the project was ongoing at the time of Iraq's invasion and occupation of Kuwait.

301. Under the project contract, payment for work performed was deferred for periods ranging from 12 to 36 months.

302. The Panel finds that the North Oil Company is an agency of the State of Iraq. The supporting documentation provided by Strojexport indicates that the performance that created the debts in question occurred between June 1989 and August 1990. The Panel, therefore, finds that the contract losses alleged by Strojexport relate partly to work that was performed prior to 2 May 1990.

303. The claim for contract losses relating to work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, only the contract losses relating to work performed subsequent to 2 May 1990 are compensable. From the documentation provided by Strojexport, the Panel was able to identify the value of the work performed subsequent to 2 May 1990 and recommends compensation in the amount of US$540,000.

(d) Derbendikhan Tunnel Project

304. Strojexport seeks compensation in the amount of US$547,000 for the unpaid foreign currency portion of invoices issued for work performed and retention monies withheld. The project contract between Strojexport and the State Organization for Roads and Bridges was dated 17 May 1983. The project contract provided for the repair of the Derbendikhan Tunnel in Iraq. Strojexport stated that work under the project contract commenced in June 1983 and the project was handed over to the Iraqi employer in 1987.

305. The Panel finds that the State Organization for Roads and Bridges is an agency of the State of Iraq. The Panel finds that the contract losses alleged by Strojexport relate entirely to work that was performed prior to 2 May 1990. The claim for contract losses under the contract for the Derbendikhan Tunnel Project is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, and the approach taken with respect to losses arising as a result of unpaid retentions set out in paragraphs 92 to 98, the Panel is unable to recommend compensation.

(e) Abu Ghraib Irrigation Project

306. Strojexport seeks compensation in the amount of US$62,913,436 for contract losses allegedly incurred on the Abu Ghraib Irrigation Project. The claim is for the unpaid foreign currency portion of invoices issued for work performed, unpaid retention money on the project, work that was performed but not invoiced and two claims brought by Strojexport against the Iraqi employer. The project contract between Strojexport and the Higher Commission of Euphrates Basin was dated 25 April 1982. The project contract provided for the performance of land reclamation works, including irrigation, drainage and the installation of a road system, in Abu Ghraib.

Strojexport stated that work on the project commenced on 8 September 1982 and terminated in 1989, more than two years behind schedule.

307. The Panel finds that the Higher Commission of Euphrates Basin is an agency of the State of Iraq. The Panel finds that the contract losses alleged by Strojexport relate entirely to work that was performed prior to 2 May 1990. The claim for contract losses under the contract for the Derbendikhan Tunnel Project is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

3. Recommendation for contract losses in Iraq

308. The Panel recommends compensation in the amount of US$1,001,019.

B. Contract losses in Kuwait

1. Facts and contentions

309. Strojexport seeks compensation in the amount of US$152,045 for contract losses in Kuwait.

310. Strojexport also seeks compensation for interest on the unpaid contractual amounts. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Water Drilling and Wells Project

311. Strojexport seeks compensation in the amount of US$18,662 (KD 5,375) for unpaid invoices for work performed on the Water Drilling and Wells Project. In 1988, Strojexport entered into a contract with a Kuwaiti enterprise, Al-Aquol, for the drilling of oil wells in Kuwait.

312. Strojexport did not provide a copy of the project contract or any other documentation by reference to which the Panel could assess its claim. By reason of the lack of evidence in relation to this item, the Panel is unable to recommend compensation.

(b) Ministry of Electricity Project

313. Strojexport seeks compensation in the amount of US$133,383 (KD 39,161) for contract losses on the Ministry of Electricity Project. On 30 June 1986, Strojexport entered into a contract with the Ministry of Electricity and Water of Kuwait to provide engineering consultancy services on water structures. Strojexport stated that work under the contract was ongoing at the time of Iraq's invasion and occupation of Kuwait.

314. The claim is for unpaid invoices presented to the Kuwaiti employer for work performed between April and June 1990 as well as for work performed in July and August 1990 in respect of which Strojexport did not present invoices to the Kuwaiti employer. In support of its claim, Strojexport provided copies of all the relevant invoices.

315. The documentation provided by Strojexport in support of this item was presented in a rather confused manner, thus making it difficult for the Panel to follow. However, the Panel finds that there was sufficient evidence before it to enable it to make a recommendation for compensation in respect of invoice no. 8566/5/50. Accordingly, the Panel recommends compensation in the amount of US$28,951.

3. Recommendation for contract losses in Kuwait

316. The Panel recommends compensation in the amount of US$28,951.

C. Loss of profits

317. Strojexport seeks compensation in the amount of US$4,880,203 for loss of profits on the West Qurna Oil Fields Project and the Hamrin Oil Fields Project in Iraq and the Water Drilling and Wells Project in Kuwait. Strojexport's claim is in two parts, namely:

(a) "Losses suffered as a result of not being able to finalise the contract" (lost production) in respect of the West Qurna Oil Fields Project and the Hamrin Oil Fields Project; and

(b) "Compensation for not being able to use the fixed assets on other projects" after the completion of the West Qurna Oil Fields Project and the Hamrin Oil Fields Project and the Water Drilling and Wells Project.

318. The Panel finds that Strojexport failed to fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 133 to 138. Accordingly, the Panel recommends no compensation.

D. Loss of tangible property

1. Facts and contentions

319. Strojexport seeks compensation in the amount of US$8,222,835 for loss of tangible property on projects in Iraq and Kuwait.

2. Analysis and valuation

(a) Losses in Iraq

(i) North Rumaila Oil Fields Project

320. Strojexport seeks compensation in the amount of US$1,396,630 for loss of tangible property from its camp in North Rumaila. The claim is for drilling equipment (US$1,123,954) and "small and short-time plant in use"

(US$272,675). Strojexport stated that the camp in North Rumaila was completely destroyed or damaged by bombing or fires following Iraq's invasion and occupation of Kuwait. Strojexport stated that the tangible property was either destroyed or stolen.

321. In respect of the claim for drilling equipment, the Panel is satisfied with the evidence provided by Strojexport of its ownership of, and the location in Iraq of, the equipment on 2 August 1990. However, the Panel considered it appropriate to make an adjustment to the value of the equipment as stated by Strojexport to take account of the age of the equipment. After making this adjustment, the Panel recommends compensation in the amount of US$60,515.

322. In respect of the "small and short-time plant in use", the Panel finds that Strojexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Iraq on 2 August 1990. Accordingly, the Panel recommends no compensation.

(ii) West Qurna Oil Fields Project

323. Strojexport seeks compensation in the amount of US$4,380,618 for loss of tangible property from its camp in West Qurna. The claim is for equipment (US$4,313,172) and "small and short-time plant in use" (US$67,446). Strojexport stated that the camp in West Qurna was completely destroyed or damaged by bombing or fires following Iraq's invasion and occupation of Kuwait. Strojexport stated that the tangible property was either destroyed or stolen.

324. In support of its claim, Strojexport provided lists containing a description of the lost items, their respective invoiced and depreciated values and customs numbers. Strojexport stated that its records of the small plant and equipment lost from the West Qurna project site were destroyed.

325. The Panel finds that Strojexport provided sufficient evidence to enable the Panel to make a recommendation of US$2,188,884.

(iii) Hamrin Oil Fields Project

326. Strojexport seeks compensation in the amount of US$425,631 for loss of tangible property from its camp in Hamrin. The claim is for fifteen vehicles (US$175,631) and the cost of purchasing spare parts to restore drilling equipment, which had not been maintained during Iraq's invasion and occupation of Kuwait, to workable condition (US$250,000).

327. In support of its claim, Strojexport provided lists containing a description of the lost items, their respective invoiced and depreciated values and customs numbers. Strojexport also provided photographs of the project site in Hamrin.

328. The Panel finds that Strojexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Iraq on 2 August 1990. Accordingly, the Panel recommends no compensation.

(iv) Abu Ghraib Irrigation Project

329. Strojexport seeks compensation in the amount of US$1,563,568 for loss of tangible property from its campsite. The claim is for materials, equipment, machinery and cars. Strojexport stated that the tangible property was either confiscated by the Iraqi authorities or stolen from the campsite.

330. In support of its claim, Strojexport provided a list of machinery lost from its Abu Ghraib project site together with photocopies of photographs of the site. These photographs show a tidy site with machinery in good working order.

331. The Panel finds that Strojexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Iraq on 2 August 1990. Accordingly, the Panel recommends no compensation.

(b) Losses in Kuwait

(i) Water Drilling and Wells Project

332. Strojexport seeks compensation in the amount of US$406,389 for loss of tangible property from its yard and a house at Abdally, close to the Iraqi border, and from its office in Farwanyia. The claim is for equipment, material, workshop, spare parts and "lost equipment from flat and office". Strojexport did not state whether the assets were stolen or destroyed, but simply describes them as "lost".

333. In support of its claim, Strojexport provided lists of the items allegedly lost. The lists contain, in the case of the lost equipment, the description, the invoice and depreciated values of the various items, and, for all other items, a description and invoiced value in Kuwaiti dinars.

334. In respect of the equipment, material, workshop and spare parts, the Panel finds that Strojexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Kuwait on 2 August 1990. Accordingly, the Panel recommends no compensation.

335. In respect of the "lost equipment from flat and office", Strojexport provided a police report which values the loss items at KD 5,480. This appears to be the purchase price and converts to US$19,026 (applying the rate of exchange used in Strojexport's claim). The Panel finds that the claim is generally lacking in evidence. Strojexport provided evidence which would support a recommendation of compensation in the amount of US$9,500 only. Accordingly, the Panel recommends US$9,500.

(ii) Ministry of Electricity Project

336. Strojexport seeks compensation in the amount of US$50,000 for loss of tangible property.

337. The Panel finds that Strojexport did not provide sufficient evidence (a) of its ownership of the assets, (b) of the cost of the assets, or (c) that these items were in Kuwait on 2 August 1990. Accordingly, the Panel recommends no compensation.

3. Recommendation for loss of tangible property

338. The Panel recommends compensation in the amount of US$2,258,899.

E. Payment or relief to others

339. Strojexport seeks compensation in the total amount of US$40,085 for payment or relief to others. The claim is for the cost of an audit carried out for Kuwaiti Ministry of Finance (US$35,000) and the cost of airfares from Kuwait to Prague for five of its experts (US$5,085).

340. Strojexport did not provide copies of the air tickets or other documentation in support of its claim.

341. The Panel finds that Strojexport did not provide sufficient evidence in support of its claim. Accordingly, the Panel recommends no compensation.

F. Other financial losses

1. Facts and contentions

342. Strojexport seeks compensation in the amount of US$7,024,591 for other financial losses.

2. Analysis and valuation

(a) Derbendikhan Tunnel Project

343. Strojexport seeks compensation in the amount of US$51,870 for expenses allegedly incurred in connection with the extension of a performance bond issued in respect of the Derbendikhan Tunnel Project. It did not explain how these expenses arose or how the losses were directly caused by Iraq's invasion and occupation of Kuwait.

344. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, and by reason of the lack of evidence provided in support of the claim, the Panel recommends no compensation.

(b) Abu Ghraib Irrigation Project

345. Strojexport seeks compensation in the amount of US$3,503,823 for losses allegedly incurred on the Abu Ghraib Irrigation Project. The items included in this claim together with the amounts claimed are set out in the following table:

Table 1. Strojexport's claim for other financial losses on the Abu Ghraib Irrigation Project

Loss item	Amount claimed (US$)
Additional customs expenses	645,000
Charges levied by sub-contractor	250,000
Bank charges (re bond)	92,250
Costs of prolongation of performance bond	2,513,573 (Original currency of loss: ID 744,150)
Total	3,500,823

346. Due to an arithmetical error in the claim, the total of the items included in the above table does not equal the total amount claimed for other financial losses in connection with the Abu Ghraib Irrigation Project.

(i) Customs expenses, sub-contractor charges and performance bonds

347. Strojexport stated that it was penalised by the Iraqi authorities because it was unable to present all original documentation required to finalise the customs procedures. Strojexport did not provide any evidence of the customs penalty.

348. Strojexport provided a statement of an amount claimed by a sub-contractor, Scharsamg Bureau. There was no evidence of payment of the relevant amount by Strojexport or explanation as to how the stated loss was directly caused by Iraq's invasion and occupation of Kuwait.

349. The evidence provided by Strojexport indicates that the performance bond dated May 1982 was extended from May 1987 to May 1990. Strojexport provided no evidence of payment of the relevant amounts by Strojexport or explanation as to how the stated loss was directly caused by Iraq's invasion and occupation of Kuwait.

350. The Panel recommends no compensation for these items.

(ii) Reconstruction of Road from Azraq to Iraqi Border

351. Strojexport seeks compensation in the amount of US$3,392,467 for losses allegedly incurred on the project for the reconstruction of the road from Azraq to the Iraqi border. The claim is for loss of all the guarantees issued in respect of the project. Strojexport failed to explain the nature of its losses and how they were directly caused by Iraq's invasion and occupation of Kuwait.

352. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, and by reason of the lack of evidence provided in support of the claim, the Panel recommends no compensation.

(c) Ministry of Electricity Project

353. Strojexport seeks compensation in the amount of US$76,431 for losses allegedly incurred on the Ministry of Electricity Project. The claim is for the cost of bank guarantees allegedly maintained by Strojexport in relation to the project. Strojexport stated that the project contract required it to maintain the bank guarantees in favour of the Kuwaiti employer until the completion of the project. Strojexport failed to explain the nature of its losses and how they were directly caused by Iraq's invasion and occupation of Kuwait. Strojexport did not explain why the bank guarantees remained outstanding even after completion of work on the project.

354. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, and by reason of the lack of evidence provided in support of the claim, the Panel recommends no compensation.

3. Recommendation for other financial losses

355. The Panel recommends no compensation.

G. Summary of recommended compensation for Strojexport

356. Based on its findings regarding Strojexport's claim, the Panel recommends compensation in the amount of US$3,288,869. The Panel finds the date of loss to be 2 August 1990.

XI. SOCHATA S.A.

357. Sochata S.A. ("Sochata"), is a French corporation that was engaged by the Ministry of Defence of the Republic of Iraq (the "Iraqi employer") in 1981 to maintain and repair Mirage military aircraft engines. Sochata seeks compensation in the total amount of US$18,086,277 (FRF 94,808,262) (modified from the original claim in the amount of US$20,408,546 (FRF 106,981,598)) for contract losses, storage expenses and other financial losses.

A. Contract losses

358. Sochata seeks compensation in the amount of (FRF 70,113,262) (modified from the original claim in the amount of FRF 82,286,598) for contract losses.

359. The Panel finds that Sochata did not provide sufficient evidence of its stated losses. In particular, the refusal to provide the contract out of which the claims arise is a major obstacle to effective consideration of the claims. The explanation given for that refusal - namely the confidentiality of the document in question - does not constitute any justification for the Panel to seek to evaluate the claims without the seminal document from which they arise. The Panel has no option but to recommend no compensation.

B. Storage expenses

360. Sochata seeks compensation in the amount of FRF 3,719,000 for expenses incurred in relation to the storage of jet engines.

361. Sochata provided no evidence in support of its claim. The Panel recommends no compensation.

C. "Financing charges"

362. Sochata seeks compensation in the amount of FRF 11,890,000 for "financing charges".

363. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest. Accordingly, the Panel has not reviewed the substance of the claim. However, the absence of relevant documentation - in particular the contract - would almost certainly have prevented the Panel from making any favourable recommendation in favour of Sochata.

D. "Advance restitution bonds"

364. Sochata seeks compensation in the amount of FRF 4,989,000 for "advance restitution bonds, the release of which ... cannot be arranged".

365. Sochata provided copies of a performance guarantee issued by the Rafidain Bank in favour of the Iraqi employer. The guarantee was issued

for the first time on 22 June 1987 and was expressed to be valid until 31 March 1988. Further documents provided by Sochata indicate that the guarantee was subsequently extended until 31 March 1989 and again until 31 March 1990. There is no evidence of any extension of the guarantee beyond 31 March 1990, nor of any attempt to obtain the release of the guarantee nor of any payments made by Sochata to support or honour the bond.

366. The Panel finds that Sochata failed to demonstrate any loss on its part or the existence of a direct link between Iraq's invasion and occupation of Kuwait and its claim for "advance restitution bonds". The Panel recommends no compensation.

E. Commercial expenses

367. Sochata seeks compensation in the amount of FRF 4,097,000 in respect of "commercial expenses not covered because of the inability to deliver and bill the ... work in progress".

368. Sochata provided no evidence in support of its claim. The Panel recommends no compensation.

F. Summary of recommended compensation for Sochata

369. Based on its findings regarding Sochata's claim, the Panel recommends no compensation.

XII. SOM DATT BUILDERS LIMITED

370. Som Datt Builders Limited ("Som Datt"), an Indian general contractor, was involved in a large number of projects in Iraq prior to 1990. Som Datt seeks compensation in the amount of US$120,671,601 (modified from the original claim in the amount of US$166,693,562) for contract losses (including unpaid contractual amounts, unpaid retention money and unpaid interest on certified payments under deferred payment agreements between the Governments of India and Iraq) in respect of the Hilla and Mosul Projects, loss of profits, loss of tangible property, evacuation of 277 of its employees from Iraq and loss of use of funds held in Iraqi banks.

371. Most of the projects had been completed as at 2 August 1990. In respect of two of the projects (the Hilla and Mosul Projects), the work had almost been completed prior to 2 August 1990. The outstanding work was commissioning. According to Som Datt, this was late because of the failure of the Iraqi employer, (the Ministry of Local Government of Iraq, State Organization for Water and Sewerage Projects, General Establishment for Implementing Water and Sewerage Projects), to supply pipes. Som Datt stated that work on the Hilla and Mosul Projects was abandoned immediately after Iraq's invasion of Kuwait and it performed no work on the projects after this date.

A. Contract losses

1. Facts and contentions

372. Som Datt seeks compensation in the amount of US$17,820,459 (modified from the original claim in the amount of US$19,490,080) for contract losses, including unpaid work and site materials (US$8,722,969) and unpaid retention money (US$9,097,490).

(a) Unpaid work and site materials

373. Som Datt seeks compensation for unpaid work and site materials on the Hilla Project (US$2,486,507 = ID 774,899) and the Mosul Project (US$6,236,402 = ID 1,943,477). The claim is for the unpaid United States dollar portion of bills 50 and 51 for the Hilla Project and bills 49 to 53 for the Mosul Project. Som Datt stated that the Iraqi dinar portion of these bills was paid by the Iraqi employer.

374. Som Datt also claims "commissioning charges" for each of the Hilla and Mosul Projects. Som Datt stated that it completed all work relating to commissioning, however, commissioning could not take place due to the fact that the remaining pipeline work was unable to be completed.

(b) Unpaid retention money

375. Som Datt seeks compensation in the amount of US$9,097,490 for unpaid retention money that was withheld by the Iraqi employer on the Hilla and Mosul Projects, the Housing Project, the Central Complex Base Project and

the Ramady Water Supply Scheme Project. The claimed amounts for each project are set out in the following table:

Table 2. Som Datt's claim for unpaid retention money

Project	Amount claimed (ID)	Amount claimed (US$)
1. Hilla Project	652,737	2,094,561
2. Mosul Project	1,084,465	3,479,928
3. Housing Project	517,402	1,660,286
4. Central Complex Base Project	276,642	934,434
5. Ramady Water Supply Scheme Project	274,799	928,281
Total		9,097,490

376. In response to a request by the Panel for further information, Som Datt sought to to increase the claimed amount for unpaid retention money on the Hilla Project to US$2,656,067 (ID 827,722). However, for the reasons set out in paragraphs 61 to 63 (amending claims after filing), the Panel did not consider Som Datt's claim for the revised amount.

2. Analysis and valuation

(a) Unpaid work and site materials

377. In support of its claim, Som Datt provided a number of documents evidencing its claim to the Iraqi employer for the unpaid amounts. These documents include correspondence from Som Datt to the Iraqi employer and summaries of the amounts owed put together by Som Datt.

378. Som Datt also provided copies of the relevant bills. In respect of the Hilla Project, bill nos. 50 and 51 dated 31 May 1990 were issued in respect of work performed from 1 April to 30 May 1990. In respect of the Mosul Project, bill nos. 49 and 50 dated 1 May 1990 were issued in respect of work performed from 1 March to 30 April 1990; bill nos. 51 and 52 dated 1 July 1990 were issued in respect of work performed from 1 May to 30 June 1990 and bill no. 53 dated 1 August 1990 was issued in respect of work performed during the month of July 1990.

379. The Panel finds that the Ministry of Local Government of Iraq, State Organization for Water and Sewerage Projects, General Establishment for Implementing Water and Sewerage Projects is an agency of the State of Iraq.

380. The supporting documentation provided by Som Datt indicates that the performance that created the debts in question occurred between 1 March and 31 July 1990. The Panel, therefore, finds that the contract losses alleged by Som Datt relate partly to work that was performed prior to 2 May 1990.

381. The claim for contract losses relating to work performed prior to 2 May 1990 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). This includes part of the work included in bill nos. 50 and 51 issued in respect of the Hilla Project and all of the work included in bill nos. 49 and 50 issued in respect of the Mosul Project. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, only the contract losses relating to work performed subsequent to 2 May 1990 are compensable.

382. From the documentation provided by Som Datt, the Panel was able to identify the value of the work performed and materials delivered subsequent to 2 May 1990 as ID 57,783. Applying the exchange rate set down in the project contracts, this amount can be converted to US$185,420. The Panel, therefore, recommends compensation in the amount of US$185,420.

(b) Unpaid retention money

(i) Hilla and Mosul Projects

383. In support of its claim for unpaid retention money on the Hilla and Mosul Projects, Som Datt provided a copy of the general conditions applicable to the Hilla and Mosul Projects. General condition 10 states that retention monies in the amount of 10 per cent of the value of the work performed were to be withheld. Half of the retention monies were to be released at the commencement of the maintenance period, with the other half to be released upon final commissioning. The timetable for the release of retention monies was confirmed by letters of intent entered into between the Iraqi employer and Som Datt for the Hilla and Mosul Projects.

384. Som Datt also provided internally-generated statements of the retention monies withheld in respect of the Hilla and Mosul Projects. In addition, it provided copies of correspondence with the Iraqi employer confirming the amounts of retention monies withheld, requests for payment under bills 46-48 for work performed between December 1989 and February 1990 on the Mosul Project and subsequent confirmation of payment by the Iraqi employer of those bills. Som Datt also provided variation orders for the Mosul Project and bills issued under the variation orders.

385. Applying the approach taken with respect to losses arising as a result of unpaid retentions set out in paragraphs 92 to 98, the Panel recommends compensation in the full amount originally claimed for the Hilla (US$2,094,561) and Mosul (US$3,479,928) Projects. The total amount of compensation recommended by the Panel is US$5,574,489.

(ii) The Housing Project, the Central Complex Base Project and the Ramady Water Supply Scheme Project

386. Som Datt did not provide copies of the project contracts or general conditions applicable to the Housing Project, the Central Complex Base Project or the Ramady Water Supply Scheme Project.

387. Som Datt did not provide sufficient evidence in support of its claim. Accordingly, the Panel recommends no compensation.

3. Recommendation for contract losses

388. The Panel recommends compensation in the amount of US$5,759,909 for contract losses.

B. Loss of interest

389. Som Datt seeks compensation in the amount of US$11,617,618 (modified from the original claim for US$50,793,501) for interest due from 30 June 1990 to 31 December 1998 on unpaid amounts certified under the Hilla and Mosul Project contracts. Som Datt stated that the claimed amounts were payable under a deferred payment arrangement entered into in respect of the Hilla and Mosul Projects. This arrangement was made in March 1987, some 19 months after the entering into of the project contracts themselves. In the circumstances, applying the approach taken with respect to contractual arrangements to defer payments set out in paragraphs 72 to 91, this claim is not compensable.

390. Som Datt also seeks compensation in the amount of US$30,119,266 (modified from the original claim for US$35,786,724) for loss of future earnings of interest on receivables.

391. The Panel has been unable to ascertain with confidence the nature of the claim. However, it appears that, in part at least, it arises out of the debt restructuring that took place during the execution of the Hilla and Mosul Projects. To that extent, applying the approach taken with respect to contractual arrangements to defer payments set out in paragraphs 72 to 91, the claim is not compensable. Another part of the claim appears to be interest on unpaid monies. However, for the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest. If and insofar as any other claim has been made, the Panel has been unable to discern a basis for it and, accordingly, is unable to make any recommendation.

392. The Panel makes no recommendation.

C. Loss of profits

393. Som Datt seeks compensation in the amount of US$25,775,959 for loss of profits, including loss of profits on the unfinished portion of the Hilla Project and the Mosul Project (US$775,959) and "loss of future earnings on project execution" (US$25,000,000).

394. The Panel finds that Som Datt did not provide any evidence to demonstrate that the Projects would have been profitable as a whole. Accordingly, Som Datt failed to meet the evidentiary standard required for loss of profits claims as set out in paragraphs 133 to 138. Applying the approach taken with respect to loss of profits for future projects set out in paragraphs 139 to 141, the Panel recommends no compensation.

D. Loss of tangible property

395. Som Datt seeks compensation in the amount of US$32,448,656 for loss of plant, machinery, equipment, vehicles, stores, spare parts and caravans that were allegedly stolen, damaged or confiscated by the Iraqi authorities after they were left behind at the Hilla and Mosul Project sites. Som Datt claims US$16,483,131 in respect of assets left behind at the Hilla Project site and US$15,965,525 in respect of assets left behind at the Mosul Project site.

396. In support of its claim, Som Datt provided statements of the value of tangible assets left behind at the Hilla and Mosul Project sites. The value of the assets was certified by the resident engineer for each project. Som Datt also provided comprehensive inventories of the stolen, damaged or confiscated assets together with unit numbers and total cost and police reports concerning the stolen assets. Finally, Som Datt submitted correspondence that confirmed the 1992 confiscation of assets left at the Mosul Project site.

397. In respect of the assets allegedly lost from the Hilla Project site, while the Panel suspects that Som Datt has indeed suffered a loss of tangible property, it is wholly impossible on the material before the Panel to put an accurate figure on that loss. Even assuming that any or all of the assets for which there is a claim were in Iraq and even assuming that the loss of their use was attributable to Iraq's invasion and occupation of Kuwait, there is still insufficient information to value the relevant loss. Accordingly, the Panel makes no recommendation.

398. In respect of the assets allegedly confiscated from the Mosul Project site, applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel is unable to make a recommendation.

E. Payment or relief to others - repatriation of workers from Iraq

1. Facts and contentions

399. Som Datt seeks compensation in the amount of US$1,282,495 for expenses connected with the evacuation of 277 employees from Iraq to India. Of the employees evacuated, 267 were working on the Hilla and Mosul Projects and 10 were employed in Som Datt's Baghdad office. The items claimed for are set out in the following table:

Table 3. Som Datt's claim for payment or relief to others

	Item	Amount claimed (original)	Amount claimed (US$)
1.	Transportation expenses - 267 employees from Iraq to Baghdad @ ID 50 per person	ID 13,350	42,839
2.	Food expenses in Baghdad for 3 to 5 days (average rate: ID 150 per person)	ID 40,050	128,516
3.	Transportation expenses - 277 employees from Baghdad to Amman @ ID 100 per person	ID 27,700	88,886
4.	Food expenses - Amman @ ID 50 per person	ID 13,850	44,443
5.	"Clearing people" @ ID 20 per person	ID 5,540	17,777
6.	Food and local expenses during stopover	ID 50,000	160,445
7.	Airfare from Amman to Delhi and Bombay for 77 persons	JD 19,153	26,545
8.	Leave salary/notice pay gratuity	ID 72,996	234,141
9.	Idle wages paid to 62 employees (August and December 1990) and related expenses in Baghdad @ ID 150 per month		277,055
10.	Prepaid and unutilised air tickets	ID 31,601	101,404
11.	Advance rent and bond for leased office		160,444
	Total amount claimed		1,282,495

2. Analysis and valuation

400. In support of its claim, Som Datt provided a list of the 277 evacuated employees showing first names, family names and passport numbers and an itemised list of expenditure for repatriation of the workforce from Iraq after 2 August 1990.

401. Som Datt provided no evidence in support of its claim for items 1-6 and item 11 in the above table.

402. In support of its claim for airfares from Amman to Delhi and Bombay for 77 persons (item 7 in the above table), Som Datt provided sufficient evidence in the form of air tickets for 64 people. Som Datt stated that the air tickets for the remaining employees are not available and "hence the claim for air fare is restricted to the persons for which the tickets are filed". Som Datt stated that the total paid for the air tickets for the 64 people was equivalent to US$32,889. However, it restricts its claim to the "original amount" of US$26,545.

403. In support of its claim for leave salary/notice pay gratuity (item 8 in the above table), Som Datt provided sufficient evidence to support its loss.

404. In support of its claim for item 9 in the above table (idle wages paid to 62 employees and workers between August and December 1990), Som Datt did not provide sufficient evidence of payment of idle wages and did not provide any evidence in support of the related expenses for accommodation, food, medical expenses and local transport in Baghdad for 62 people.

405. In support of its claim for prepaid and unutilised air tickets: Delhi/Baghdad sector (item 10 in the above table), Som Datt provided insufficient evidence to support the alleged loss.

3. Recommendation for payment or relief to others

406. While one would not expect a very detailed level of documentary substantiation for the costs incurred in moving people out of a theatre of war, nonetheless, this claim is seriously deficient in supporting records and appears on the face of it to be appreciably inflated. However, the Panel recognises the importance of companies accepting responsibility for assisting their staff out of such a situation. The Panel also notes the generally credible approach of Som Datt to its claim. In the circumstances, and based on the material before it, the Panel is able to recommend compensation in the amount of US$296,366 (ID 88,045 and US$13,263).

F. Loss of use of funds held in bank accounts in Iraq

407. Som Datt seeks compensation in the amount of US$1,045,641 (ID 325,[illegible] [illegible]ed from the original claim for US$1,116,145 (ID 406,866)) for loss of cash balances held in five separate bank accounts with the Rafidain Bank, Baghdad, Mosul and Hilla branches. Som Datt deposited the funds with the Rafidain Bank "for the performance of the contracts under execution and other activities in Iraq". Som Datt stated that it is unable to access the funds or withdraw them from Iraq.

408. Applying the approach taken with respect to loss of funds in bank accounts in Iraq set out in paragraphs 142 to 147, the Panel recommends no compensation.

G. Summary of recommended compensation for Som Datt

409. Based on its findings regarding Som Datt's claim, the Panel recommends compensation in the amount of US$6,056,275. The Panel finds the date of loss to be 2 August 1990.

XIII. SNAMPROGETTI SPA

410. Snamprogetti SpA ("Snamprogetti") is an Italian corporation involved in engineering, contracting and technological research. At the time of Iraq's invasion and occupation of Kuwait, Snamprogetti was involved in the development, design and construction of a number of industrial and infrastructure facilities projects in Iraq.

411. Snamprogetti seeks compensation in the amount of US$68,594,738 for lost cash and funds in bank accounts, loss of tangible property, accounts payable to suppliers, receivable credits, costs incurred and not invoiced, the fixed costs of running the Baghdad branch office and "lost" bank guarantee bonds paid to Iraqi clients. The losses were allegedly incurred by Snamprogetti and its English and Swiss subsidiaries.

412. Snamprogetti intimated that it had documentation to support its claims at its head office. However, it is required that all documents upon which a claimant wishes to rely in support of its claim must be filed with the Commission. If the documents are not filed, the Panel cannot rely upon them. Accordingly, in those cases where Snamprogetti relies only upon documents which have not been filed, there has been nothing to consider and the Panel's recommendation is inevitably nil.

A. Lost cash and funds in bank accounts

413. Snamprogetti seeks compensation in the total amount of US$6,031,528 (ID 1,875,805) for lost cash and funds in bank accounts. The relevant amounts were cash funds kept at Snamprogetti's Basrah site office (ID 27,387) and amounts deposited in three accounts with the Rafidain Bank, Baghdad and Basrah branches (ID 1,848,418).

414. Snamprogetti stated that, following Iraq's invasion and occupation of Kuwait, it "lost access to these sums, which were presumably confiscated". Snamprogetti stated that the amounts deposited with the Rafidain Bank were frozen after Iraq's invasion and occupation of Kuwait.

415. The Panel finds that Snamprogetti failed to establish that the petty cash existed at the Basrah site at the time the project site was abandoned. The Panel was unsure of the relevance of the Basrah site cash account records as of 31 December 1991 provided by Snamprogetti, given that the loss allegedly occurred after Snamprogetti's expatriate personnel left the site in November and December 1990. Applying the approach taken with respect to loss of petty cash in Iraq paragraph 148, the Panel recommends no compensation for lost cash.

416. Applying the approach taken with respect to loss of funds in bank accounts in Iraq set out in paragraphs 142 to 147, the Panel recommends no compensation for lost funds in bank accounts in Iraq.

B. Loss of tangible property

417. Snamprogetti seeks compensation in the amount of US$1,729,250 (ITL 2,004,720,000) for loss of tangible property, including heavy equipment, machinery, vehicles, tools, office equipment and furniture.

418. Snamprogetti stated that all of the tangible property was confiscated by the Iraqi authorities. This was supported by a confiscation order dated 16 April 1992 issued by the Presidential Bureau of Iraq.

419. Apart from a list of the tangible property the subject of its claim to which were attached an asserted value and a depreciation rate, Snamprogetti provided virtually no documentation in support of this claim. Instead, it said that all of the relevant documentation was available at its head office. In the premises, there was no material which the Panel could consider evidencing the claim.

420. In addition, applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation.

C. Contract losses: accounts payable to suppliers

1. Facts and contentions

421. Snamprogetti seeks compensation in the amount of US$4,602,495 (ITL 1,164,562,100, US$3,589,064, CHF 11,488) for accounts payable to fourteen of its suppliers. The suppliers are predominately Italian companies. However, they also include a Swiss corporation and a United States corporation. Snamprogetti stated that between 30 August 1990 and 31 October 1991 it was invoiced the cost of services provided and materials supplied by suppliers under supply contracts entered into in respect of three projects in Iraq (the Lube Oil Plant, Basrah, the East Baghdad Oil Field and the Wax Hydrofinishing Project).

422. Snamprogetti stated that it was unable to re-invoice the amounts invoiced for services supplied due to the forced interruption of relations with its Iraqi clients as a result of Iraq's invasion and occupation of Kuwait. Snamprogetti stated that the materials that were unable to be shipped as a result of Iraq's invasion and occupation of Kuwait were subsequently unable to be used in other projects. Snamprogetti did not state what happened to the materials.

2. Analysis and valuation

423. In support of its claim, Snamprogetti provided a schedule for each of the three projects setting out the name of the supplier, the invoice number and date, the amount invoiced, the relevant contract number, the period when the work was completed and the total for each supplier. Snamprogetti also provided copies of each of the invoices referred to in the schedule and copies of letters of demand for payments issued by several of the

suppliers. However, Snamprogetti stated that it has not paid all of the suppliers for the amounts invoiced. It provided evidence of payment to one sub-contractor only.

424. A cross-category check by the secretariat has identified the fact that three of Snamprogetti's sub-contractors have filed claims for the relevant outstanding sums directly with the Commission. As the party with the primary entitlement to the money (if any money is due) it is the view of the Panel that a sub-contractor is entitled to seek compensation directly. Where this happens, the identical claim cannot be recommended for payment where it is made by another party to the sub-contract. Accordingly, the Panel makes no recommendation with respect to these three sub-contractors.

425. Snamprogetti has denied any liability to one of the sub-contractors in proceedings in another forum. In the circumstances, it is difficult to see on what basis Snamprogetti can maintain a claim in its own name to the self same sums sought to be recovered by this sub-contractor. Accordingly, the Panel recommends no compensation in respect of this claim.

426. In respect of all of the sub-contractor claims, there are (as there have been before in other of these claims) documentary problems. In numerous of the cases, the relevant sub-contract has not been supplied to the Panel. There is no explanation in respect of materials that were not shipped of precisely why it was that no use could have been made of them and why they did not apparently have any scrap value. These difficulties render it impossible for the Panel to form any reasonable rational view of the amount of Snamprogetti's actual loss, if any.

3. Recommendation for accounts payable to suppliers

427. The Panel recommends no compensation.

D. Contract losses (receivable credits)

428. Snamprogetti's claim for receivable credits is a claim for outstanding contractual debt and retention money under twelve project contracts (Lube Oil Plant, South LPG Project, Wax Hydrofinishing Project, East Baghdad Oil Field Project, IPSA Phases I and II, Waste Water Treatment Plant, Men's Garment Project, Najaf, Crude Oil Export from Khor al Zubair, 27 filling stations, Fertilizer Expansion Project No. 3 and Gas Sweetening Plant).

429. The following table sets out the position summarised in the previous paragraph.

Table 4. Snamprogetti's claim for receivable credits

Project	Items included in claim	Net amount of claim
1. Snamprogetti SpA		
Lube Oil Plant, Basrah	Contract	US$ 1,299,533
		ITL 52,700,000
		ID 2,727
	Less advance payment	(US$ 5,442)
		(ID 663)
South LPG Project	Contract	US$ 147,347
		ID 1,250
Wax Hydrofinishing Project	Contract	US$ 2,206,087
		ID 136,251
	Less advance payment	(US$ 712,529)
		(ID 15,498)
East Baghdad Oil Field Project	Contract	US$ 1,533,706
		ID 353,288
	Less advance payment	(US$ 3,656)
IPSA Phase I	Contract	US$ 1,868,872
		ID 107,720
	Less advance payment	(ID 56)
IPSA Phase II	Contract	DM 3,682,026
		ID 5,166
	Less advance payment	(DM 315,165)
		(ID 559)
Waste Water Treatment Plant, Basrah	Contract	US$ 5,062,219
		ID 162,629
	Less advance payment	(US$ 496,237)
		(ID 95,964)
Crude Oil Export from Khor Al Zubair	Contract	US$ 138,450
Men's Garment Project, Najaf	Contract	DM 2,725,861
		ID 111,977
	Less advance payment	(DM 208,022)
		(ID 6,699)

27 Filling Stations	Contract	ID 83,929
Fertilizer Expansion Project No. 3	Advance payment	(DM 36,130,500)
2. Snamprogetti Ltd. UK		
East Baghdad Oil Field Project	Contract	GBP 823,688
Gas Sweetening Plant	Contract Less advance payment	GBP 440,294 (GBP 62,483)
3. Snamprogetti S.A. Geneva		
Waste Water Treatment Plant, Basrah	Contract	US$ 888,387
	Total	US$ 11,926,737 (DM 30,245,800) ITL 52,700,000 ID 845,498 GBP 1,201,499

430. On the assumption that all of Snamprogetti's claims summarised in the table above are valid and recoverable in the full amount, Snamprogetti is still left with a surplus. This is the result of the substantial advance payment of DM 36,130,500 paid in respect of the Fertilizer Expansion Project No. 3.

431. That advance payment appears in the table above in the reduced amount of DM 30,245,800. The reduction has taken account of advance expenditures which Snamprogetti has noted as having been expended in respect of other projects. It follows that the surplus noted in the previous paragraph has taken into account claims in respect of these advance expenditures as well.

432. In the circumstances, there is no loss to Snamprogetti in respect of contract receivables for which the Panel can recommend compensation. Indeed it is necessary when considering the remaining claim of Snamprogetti to bear in mind the surplus which still exists after making the above calculation. In doing so however, the Panel notes that Snamprogetti, in its formulation of the claim, allowed for the advanced payment of DM 36,130,500 in its claim for contract receivables generally. It did not introduce it into the claim for the Fertilizer Expansion Project No. 3, where it might more logically have been expected to appear. While this Panel is in no way bound by the way in which claims are formulated or characterised, in the present case, it has decided to respect Snamprogetti's formulation.

433. The Panel recommends no compensation.

E. Contract losses (costs incurred and not invoiced)

434. Snamprogetti seeks compensation in the amount of US$4,150,781 (ITL 4,812,000,000) for costs incurred and not invoiced in relation to the Fertilizer Expansion Project No. 3. Snamprogetti stated that the project contract was entered into between Snamprogetti and the Fertilizer Projects Commission of Iraq on 24 July 1989. On 3 April 1990, the same parties entered into Addendum No. 1 and a "Bridge Agreement". Under the Bridge Agreement, Snamprogetti agreed to start work on the project against the advance payment. Snamprogetti stated that it continued work under the Bridge Agreement until 2 August 1990 at which time work on the project was interrupted by Iraq's invasion and occupation of Kuwait.

435. Snamprogetti claims the costs allegedly incurred by it in connection with its bid for the project (ITL 659,000,000), operating costs allegedly incurred by it prior to the cessation of work (ITL 3,225,000,000) and overheads relating to engineering costs incurred during the operating phase (ITL 928,000,000). Snamprogetti stated that the amount claimed is 70 per cent of ITL 1,326,000,000.

436. There are numerous problems with this claim. Bid costs, operating costs, and overheads are to be recovered through the payments under the contract for work done. While this is a claim for work done, there is no indication of how much of these costs would be recovered through any payment made in respect of it. Accordingly, the Panel does not see this item as recoverable in principle, and, in any event, it is unable to make any accurate evaluation of quantum.

437. The Panel recommends no compensation.

F. Fixed costs of running the Baghdad branch office

438. Snamprogetti seeks compensation in the amount of US$740,102 (ITL 858,000,000) for the fixed costs of operating its Baghdad branch office during the period August 1990 to February 1991. The main items claimed for are the labour costs of expatriate personnel, rent for the building and "consumables".

439. The Panel finds that Snamprogetti failed to explain how the costs incurred were a direct result of Iraq's invasion and occupation of Kuwait. In any event, the Panel is of the view that they would have been covered by the surplus noted in paragraph 430, supra. Accordingly, the Panel recommends no compensation.

G. Bank guarantee bond in favour of Iraqi clients

440. Snamprogetti included in its claim a claim for compensation in the amount of US$53,729,033 (US$16,161,955, DM 39,741,036, ID 2,778,251, GBP 1,678,670) for loss of bank guarantee bonds in favour of its Iraqi clients. The claim was in respect of outstanding bank guarantee bonds (bid bonds, advance payment bonds, performance bonds and overdraft guarantees) given by Snamprogetti and its English subsidiary in respect of 15 projects in Iraq.

Although Snamprogetti has not actually incurred a loss in respect of the guarantees, its claim was expressed as a risk of the Iraqi clients cashing the guarantees "due to non-performance of contractual obligations".

441. Snamprogetti further stated that it has not actually incurred a loss with respect to the bank guarantee bonds, but is merely reserving its right to file a claim in the future if the Iraqi clients cash the bonds at some future point in time.

442. The Panel finds that Snamprogetti's claim is too contingent and remote. Snamprogetti openly admits that it has not yet incurred a loss with respect to the bank guarantees. The Panel has dealt with Snamprogetti's other claims, and on the basis of the documentation provided by Snamprogetti, sees no justification for a further award of compensation. For these reasons, and applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, the Panel recommends no compensation.

H. Summary of recommended compensation for Snamprogetti

443. Based on its findings regarding Snamprogetti's claim, the Panel recommends no compensation.

XIV. SAMSUNG ENGINEERING AND CONSTRUCTION CO. LTD.

444. Samsung Engineering and Construction Co., Ltd., ("Samsung"), a Korean corporation, is an engineering contractor that was engaged to perform work on a number of construction projects in Iraq at the time of Iraq's invasion of Kuwait. Samsung seeks compensation in the total amount of US$78,791,431 for contract losses, loss of interest and loss of tangible assets.

445. Samsung had been engaged by the State Corporation for Roads and Bridges of the Republic of Iraq to perform work on the Baghdad-Abu Ghraib Expressway Project, and by the State Contracting Company for Industrial Projects of the Republic of Iraq to perform work on the Ancillary Building Project and the Concrete Deck Project.

A. Contract losses

1. Facts and contentions

446. Samsung claims the amount of US$61,285,569 for contract losses. Samsung stated that it had completed all work on each of the projects by December 1989.

447. Samsung also seeks compensation in the amount of US$15,267,504 for interest on unpaid promissory notes. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Unpaid promissory notes

448. Samsung seeks compensation in the amount of US$59,491,126 for unpaid promissory notes. The promissory notes were issued under deferred payment arrangements entered into between Samsung and the Iraqi employer in respect of the Baghdad-Abu Ghraib Expressway Project, the Ancillary Building Project and the Concrete Deck Project. The deferred payment arrangements were entered into subsequent to the signing of each of the project contracts.

449. The Panel finds that the State Corporation for Roads and Bridges and the State Contracting Company for Industrial Projects are agencies of the State of Iraq. The Panel has considered the documentation such as was put forward in support of this claim. The Panel finds that the promissory notes the subject of Samsung's claim relate to work that was entirely performed prior to 2 May 1990.

450. The claim for unpaid promissory notes is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution

687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(b) Unpaid contractual amounts: Baghdad-Abu Ghraib Expressway Project

451. Samsung seeks compensation in the amount of US$327,226 for overdue progress payments in respect of the Baghdad-Abu Ghraib Expressway Project. Samsung also seeks compensation in the additional amount of US$572,687 for the first half of the retention money on the Baghdad-Abu Ghraib Expressway Project.

452. Samsung stated that the provisional acceptance certificate for the Baghdad-Abu Ghraib Expressway Project was issued on 24 December 1989 and the maintenance period expired in December 1990. Samsung applied for the issue of the final acceptance certificate in December 1990, however, it was not issued by the Iraqi employer until 7 November 1991. Samsung stated that this delay in the issue of the final acceptance certificate was a result of Iraq's invasion and occupation of Kuwait.

(i) Overdue progress payments

453. Samsung's claim for overdue progress payments relates to amounts covered by invoices nos. 55 to 57. Samsung did not provide copies of these invoices. Samsung stated neither the dates of their issue nor the dates of the performance of the work to which they related. Samsung stated that it performed all the relevant work covered by this item of its claim prior to December 1989.

454. The Panel finds that the State Contracting Company for Industrial Projects of the Republic of Iraq is an agency of the State of Iraq. The Panel has considered the documentation such as was put forward in support of this claim. The Panel finds that the contract losses alleged by Samsung relate entirely to work that was performed prior to 2 May 1990.

455. The claim for contract losses under the Baghdad-Abu Ghraib Expressway Project contract is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(ii) Unpaid retention monies

456. The project contract entered into for the Baghdad-Abu Ghraib Expressway Project provided for five per cent of the total amount invoiced to be withheld as retention money. Of this amount, half was to be released on practical completion (commencement of the maintenance period) and the other half at the end of the maintenance period. According to Samsung, practical completion occurred on 24 December 1989 and the maintenance period terminated on 7 November 1991 upon the issue of the final acceptance certificate.

457. Samsung claims the first half of the retention money was due to be released on 24 December 1989. This was the retention amount withheld on the 15 per cent United States dollar cash component of the contract value.

458. Samsung also provided a copy of the final account agreement dated December 1990. Samsung did not provide other evidence in support of its claim.

459. Applying the approach taken with respect to losses arising as a result of unpaid retentions set out in paragraphs 92 to 98, the Panel finds that the retention money due on 24 December 1989 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). With respect to the retention money due upon the issue of the final acceptance certificate, the Panel finds that Samsung did not demonstrate that the failure to pay the amounts due on 7 November 1991 are the direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(c) Unpaid contractual amounts: Ancillary Building Project and Concrete Deck Project

460. Samsung seeks compensation in the amount of US$91,901 for overdue progress payments in respect of the Ancillary Building Project and the Concrete Deck Project. Samsung also seeks compensation in the additional amount of US$802,629 for the second half of the retention money on the Ancillary Building Project and the Concrete Deck Project.

461. Samsung provided copies of two agreements, each dated 23 August 1984, amending the main project contract. Under the amending agreements, ten per cent of the total amount invoiced on the Ancillary Building Project and the Concrete Deck Project was to be withheld as retention money, up to a maximum of five per cent of the total contract amount. Of this amount, half was to be released on the issue of the preliminary acceptance certificate and the other half on the issue of the final acceptance certificate.

462. Samsung stated that a provisional acceptance certificate for each of the Ancillary Building Project and the Concrete Deck Project was issued on 30 June 1988. Samsung stated that the issue of a final acceptance certificate for each of the projects was delayed until 4 September 1990 as a result of Iraq's invasion and occupation of Kuwait. Samsung did not provide copies of the preliminary acceptance certificate or the final acceptance certificate.

463. Having considered the evidence provided by Samsung, the Panel finds that the State Contracting Company for Industrial Projects of the Republic of Iraq is an agency of the State of Iraq. That said, it is the case that the contract losses for which Samsung claims are wholly in respect of work that was performed prior to 2 May 1990. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the

claims are not compensable. Therefore, the Panel is unable to recommend compensation for the overdue progress payments.

464. The Panel notes that the first half of the retention money was due on 30 June 1988. Any claim in respect of this amount is clearly outside the jurisdiction of the Commission.

465. The second half of the retention money (which is the subject of the evidence referred to in the previous paragraph) fell due on 4 September 1990. However, this debt was the subject of a fresh agreement between the Ministry of Housing and Construction and Samsung on 29 December 1990. It follows that Samsung has bargained its right to the second half of the retention money for such benefits as it obtained under the latter agreement. That latter agreement is the source of any right to any compensation which Samsung might now have. It follows that the claim is not triggered by Iraq's invasion and occupation of Kuwait, but by the failure of the Iraqi authorities to honour the latter agreement. That is a claim which, in the view of the Panel, is not a loss that is a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel is unable to recommend compensation.

3. Recommendation for contract losses

466. The Panel recommends no compensation.

B. Loss of tangible property

1. Facts and contentions

467. Samsung seeks compensation in the total amount of US$2,238,358 for loss of tangible assets, including construction equipment (US$1,500,000) and spare parts (ID 230,098 * 3.208889 = US$738,358).

2. Analysis and valuation

(a) Construction equipment

468. Samsung asserts that, upon completion of the Baghdad-Abu Ghraib Expressway Project, it was left with 87 items of construction equipment. It sought to sell these. On 19 December 1991, it agreed to sell them to a Jordanian enterprise, namely United Commercial and Construction Enterprise, for US$1,500,000. Under the agreement, Samsung received US$570,000 as an advance payment. However, the sale could not be executed because of the trade embargo, without the approval of the Security Council and, therefore, on 14 February 1992, Samsung wrote to the chairman of the Security Council requesting permission to export the equipment to Jordan. That permission was obtained on 9 March 1992. However, before it could be implemented, the equipment was confiscated by the Ministry of Military Industry of the Republic of Iraq on 20 April 1992.

469. As a result of the confiscation, Samsung had to refund the US$570,000 advance payment to the would-be purchaser.

470. In the view of the Panel on the material put before it, there can be no doubt that the equipment, the subject of the claim belonged to Samsung and was in Iraq. The events which occurred seem to the Panel to show that, unusually, this confiscation is directly and causally connected with Iraq's invasion and occupation of Kuwait. It follows that, in the opinion of the Panel, Samsung's loss of the value of this equipment flowed directly from Iraq's invasion and occupation of Kuwait. The Panel finds that the quantum of this claim was unusually well established by this agreement. Accordingly, the Panel recommends compensation in the amount of US$1,500,000.

(b) Spare parts

471. In support of its claim, Samsung provided voluminous documents entitled "packing lists" covering all the spare parts included in the claim. Samsung also provided documents entitled "receiving protocols" issued by the Military Industrial Commission of the Republic of Iraq certifying the receipt by it of the majority of the spare parts included in the claim. In Samsung's claim, Samsung was not able to provide purchase invoices, as it had taken over the spare parts from the joint venture that had initially been engaged to perform work on the Baghdad-Abu Ghraib Expressway Project.

472. The Panel accepts that Samsung has established the existence of a considerable inventory in Iraq and belonging to it. This conclusion flows both from the documentation that was provided and from the credibility generated by the Samsung approach to other aspects of this claim. The only area where the Panel has any difficulty is in that of quantum. The claimed quantum appears to be extremely high, particularly in the light of the value attributed to the equipment for whose benefit, presumably, the inventory existed. Accordingly, the Panel recommends compensation in the amount of US$190,000.

3. Recommendation for loss of tangible property

473. The Panel recommends compensation in the amount of US$1,690,000.

C. Summary of recommended compensation for Samsung

474. Based on its findings regarding Samsung's claim, the Panel recommends compensation in the amount of US$1,690,000. The Panel finds the date of loss to be 19 December 1991.

XV. CONSTRUCTION COMPANY "PELAGONIJA"

475. Construction Company Pelagonija ("Pelagonija") is a public sector company incorporated in the Republic of Macedonia. At the time of Iraq's invasion of Kuwait, Pelagonija was engaged as a contractor to perform construction works on the following projects in Iraq: Project 946 (Stage 1), Project 946 (Stage 2), Project 85770, Project 85742, Project 85772, Project 85794, Project 85481, Project 85773 and Project 500/4.

476. Pelagonija seeks compensation in the total amount of US$198,915,387 for contract losses, loss of profits, loss of tangible property, monies that were left in bank accounts in Iraq and lost petty cash.

A. Contract losses

1. Facts and contentions

477. Pelagonija seeks compensation in the amount of US$142,610,571 for contract losses allegedly incurred on projects in Iraq.

478. Pelagonija claims the additional amount of US$34,698,262 for interest on unpaid contractual amounts commencing on the due date of each payment under the relevant project contract up to June 30 1993. Pelagonija also claims interest on the total amount of its claim at the rate of six per cent for the period 1 July 1993 to the date of payment. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

479. All the relevant project contracts with Iraqi entities were dated between 1980 and 1989. In accordance with the practice prevailing in the former Yugoslavia at this time, the Federal Directorate of Supply and Procurement of the former Yugoslavia ("FDSP") entered into the project contracts with the relevant Iraqi entity. FDSP then entered into arrangements with local contractors in the former Yugoslavia. Under these arrangements, the local contractor undertook the whole responsibility of the contract between FDSP and the Iraqi authority and became entitled to the benefit. Under the arrangements, the local contractor was obliged to sub-let nominated elements of the work.

2. Analysis and valuation

(a) Project 946 (Stage 1)

480. Pelagonija seeks compensation in the amount of US$78,587,970 for contract losses allegedly incurred on Project 946 (Stage 1), including unpaid monthly certificates (US$507,354) and unpaid deferred payments (US$78,080,616).

(i) Unpaid monthly certificates

481. Pelagonija seeks compensation in the amount of US$507,354 for unpaid amounts included in monthly certificate no. 7 (amount claimed US$57,422), no. 15 (amount claimed US$308,357) and no. 27 (amount claimed US$141,575).

482. All three monthly certificates relate to work that was performed in the month of February 1990.

483. The Panel finds that the Auqba Bin Nafi General Establishment is an agency of the State of Iraq. The Panel finds that the contract losses alleged by Pelagonija relate entirely to work that was performed prior to 2 May 1990. The claim for contract losses under the contract for Project 946 (Stage 1) is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(ii) Unpaid deferred payments

484. Having determined that the outstanding unpaid work relates entirely to work that was performed prior to 2 May 1990, the Panel finds that the amounts due under the credit arrangement for work performed on Project 946 (Stage 1) are deferred payment agreements. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 72 to 91, the claim for unpaid deferred payments under the contract for Project 946 (Stage 1) is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

(b) Project 946 (Stage 2)

485. Pelagonija seeks compensation in the amount of US$60,338,678 for contract losses allegedly incurred on Project 946 (Stage 2), including unpaid monthly certificates (US$8,242,944) and unpaid deferred payments (US$52,095,734).

(i) Unpaid monthly certificates

486. Pelagonija seeks compensation in the amount of US$8,242,944 for unpaid amounts included in monthly certificates. The claim is for the 25 per cent Iraqi dinar portion of monthly certificate nos. 1, 17, 18 and 19 (US$2,068,613) and the 30 per cent United States dollar portion of monthly certificate nos. 15 to 19 (US$6,174,331). The certificates cover work performed between July and September 1990 under the main project contract and certain variation orders and addenda.

487. The Panel finds that Pelagonija was entitled to the amounts contained in the monthly certificates the subject of its claim and that the amounts claimed are within its jurisdiction. It recommends that compensation be paid in the full amount claimed for unpaid work included in monthly

certificate nos. 1, 15, 16, 17 and 18. With respect to monthly certificate no. 19, the Panel finds that Pelagonija provided insufficient evidence that all work included in this certificate was accepted by the Iraqi employer. The Panel, therefore, makes an adjustment to the amount claimed for monthly certificate no. 19 to account for this uncertainty.

488. The Panel recommends compensation in the amount of US$8,058,681.

(ii) Unpaid deferred payments

489. The Panel finds that the amounts due under the credit arrangement for work performed on Project 946 (Stage 2) are deferred payment agreements. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 72 to 91, the claim for unpaid deferred payments under the contract for Project 946 (Stage 2) is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

(c) Projects 85770, 85742, 85772, 85794, 85481, 85773, 500/4

490. In addition to the two stages of Project 946, Pelagonija seeks compensation in the amount of US$3,683,923 for unpaid contractual amounts in respect of other projects. The projects and the amounts claimed are set out in the following table:

Table 5. Pelagonija's claim for unpaid contract amounts on other projects

Project	Amount claimed (US$)
Project 85770	609,676
Project 85742	1,335,007
Project 85772	12,227
Project 85794	900,421
Project 85481	615,066
Project 85773	64,949
Project 500/4	146,577
Total	3,683,923

491. The Panel has carefully considered all the claim documentation filed by Pelagonija in support of the claims in respect of these projects. The documentation indicates that the work in every case was performed prior to 2 May 1990. It is, therefore, work that is not compensable under Security Council resolution 687. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

3. Recommendation for contract losses

492. The Panel recommends compensation in the amount of US$8,058,681.

B. Loss of tangible property

493. Pelagonija seeks compensation in the amount of US$8,425,911 for loss of tangible property used, or destined for use, on Project 946, (Stages 1 and 2).

1. Project 946 (Stage 1)

494. Pelagonija seeks compensation in the amount of US$728,690 for specially manufactured equipment that was destined for shipment to the Project 946 (Stage 1) site. Pelagonija stated that the equipment was unable to be shipped due to Iraq's invasion and occupation of Kuwait. It further stated that, due to the special characteristics of the equipment, it could not be resold or used for other purposes.

495. However, Pelagonija provided no evidence concerning equipment that could not be shipped to the Project 946 (Stage 1) site. It provided no evidence to demonstrate that the equipment could not be shipped to Iraq or that it incurred any loss in connection with the inability to ship the equipment. Nor did Pelagonija provide evidence of the arrangements for the opening of the letters of credit or the payment of the advance payment, which would indicate when the delivery was scheduled to take place. Pelagonija provided no evidence that the assets could not be resold or used for another purpose.

2. Project 946 (Stage 2)

496. Pelagonija seeks compensation in the amount of US$7,697,221 for loss of tangible property that was used, or destined for use, on Project 946 (Stage 2). The claim is for construction machinery, technical equipment, vehicles and materials that were used on the project site and were left at the site after Pelagonija's workers were evacuated (US$5,269,790), spare parts and inventory that were abandoned at the project site (US$2,198,893) and equipment that was ready for shipment to the project site and could not be used for another purpose (US$228,538).

(a) Construction machinery, technical equipment, vehicles and materials

497. Pelagonija stated that construction machinery, technical equipment, vehicles and materials were left at the Project 946 (Stage 2) after its personnel were evacuated. When Pelagonija returned to the project site in 1993, there was nothing remaining at the site.

498. The Panel finds that materials of this nature would normally be included in monthly certificates issued by a contractor to the employer. Pelagonija provided no evidence that the materials were not included in the monthly certificates issued for the project. Pelagonija provided no

evidence of the cost, age, ownership or book value of the assets included in the summaries.

(b) Spare parts and inventory

499. This claim relates to construction, plumbing and accommodation inventory and spare parts for electrical equipment.

500. The Panel finds that spare parts and inventory would normally be included in monthly certificates issued by a contractor to the employer. Pelagonija provided no evidence that the spare parts and inventory were not included in the monthly certificates issued for the project.

(c) Equipment ready for shipment

501. This claim relates to specially manufactured equipment that was destined for shipment to the Project 946 (Stage 2) project site. The relevant equipment comprised equipment specified in variation order no. 11 dated 19 June 1990, computer and technical equipment and a graphic terminal. Pelagonija stated that the equipment was unable to be shipped due to Iraq's invasion and occupation of Kuwait. It further stated that, due to the special characteristics of the equipment, it could not be resold or used for other purposes.

502. Pelagonija did not provide a copy of variation order no. 11 or any evidence of the costs relating to the equipment. Pelagonija provided no evidence that the equipment could not be resold or used for another purpose.

3. Recommendation for loss of tangible property

503. The Panel finds that Pelagonija did not provide sufficient evidence of its stated losses for Project 946 (Stages 1 and 2). The Panel recommends no compensation for equipment that could not be shipped to the Project 946 (Stage 1) project site and no compensation for tangible property that was used, or destined for use, on Project 946 (Stage 2).

C. Payment or relief to others

1. Facts and contentions

504. Pelagonija seeks compensation in the amount of US$516,500 for payment or relief to others. The claim is for the cost of evacuating 310 of Pelagonija's workers from Iraq to the former Yugoslavia via Jordan by air (US$232,719) and 43 of its workers by road (US$41,113), payment of 310 workers' salaries (US$181,362) and "paid fees of salaries" (US$61,306) during the non-productive period during which the evacuation occurred.

2. Analysis and valuation

505. In support of its claim for the cost of evacuating workers from Iraq to the former Yugoslavia via Jordan by air, Pelagonija provided four

translated invoices for Iraqi dinar amounts stated by Pelagonija to equal US$3,451. Only one of the invoices (for a bus trip to Amman) has a legible date, which reads 21 August 1990.

506. In support of its claim for the cost of evacuating workers from Iraq to the former Yugoslavia by road, Pelagonija provided a list of the workers who were evacuated, together with copies of expense vouchers listing the per diem allowances paid to the workers. Pelagonija also provided evidence of the per diem allowances paid to the drivers of the buses. However, Pelagonija provided very little information in support of the costs claimed.

507. Pelagonija provided no evidence in support of, or further information concerning, its claim for the payment of salaries to workers and "paid fees of salaries".

3. Recommendation for payment or relief to others

508. While one would not expect a very detailed level of documentary substantiation for the costs incurred in moving people out of a theatre of war, nonetheless, Pelagonija submitted incomplete supporting records. However, on the basis of such material as was supplied, the Panel recommends compensation in the amount of US$258,250.

D. "Lost" funds left in Iraqi bank accounts and lost petty cash

509. Pelagonija seeks compensation in respect of the ID 3,927,086 held in bank accounts with the Rafidain Bank, Iraq, and petty cash that was left behind in the cash register at the Project 946 (Stage 2) project site. This money was partly claimed in Iraqi dinars and partly in United States dollars.

510. Applying the approach taken with respect to loss of funds in bank accounts in Iraq set out in paragraphs 142 to 147, the Panel recommends no compensation.

E. Summary of recommended compensation for Pelagonija

511. Based on its findings regarding Pelagonija's claim, the Panel recommends compensation in the amount of US$8,316,931. The Panel finds the date of loss to be 15 August 1990.

XVI. DROMEX ROADS AND BRIDGES CONSTRUCTION EXPORT ENTERPRISE

512. Dromex Roads and Bridges Construction Export Enterprise ("Dromex") is a state-owned enterprise incorporated in Poland. Its principal activity is the construction of roads and bridges. At the time of Iraq's invasion of Kuwait, Dromex was involved in construction and trading activities in Iraq through its representative office in Iraq. Dromex seeks compensation in the amount of US$41,479,821 (modified from the original claim in the amount of US$48,000,707) for contract losses, loss of profits, tangible property losses, payment or relief to others and other losses.

513. In a letter dated 29 September 1998, the Permanent Mission of the Republic of Iraq in Geneva provided the Commission with an account of the events giving rise to several aspects of the claim by Dromex. The Panel notes that the detailed commentary made by the Government of Iraq was helpful to it in its consideration of the claim by Dromex.

A. Contract losses

1. Facts and contentions

514. Dromex seeks compensation in the amount of US$11,480,828 (modified from the original claim in the amount of US$14,344,383) for contract losses for the items and amounts in the following table:

Table 6. Dromex' claim for contract losses

Loss item	Amount claimed (US$)
Loss and frustrated expenses from the suspension of Expressway No. 1 contract	269,032
Unpaid amounts due for section R/9 of Expressway No. 1	8,754,359
Loss and expenses incurred relating to the purchase of electric lighting poles	20,926
Unpaid amounts due under a contract with the Ministry of Housing	78,533
Unpaid amounts due under a contract with the State Establishment for Food Stuff Trading	1,570,818
Frustrated expenses incurred in preparing a tender	787,160
Total	11,480,828

515. Dromex also seeks compensation for interest on unpaid contractual amounts. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Loss and frustrated expenses arising out of suspension of Expressway No. 1 contract

516. Dromex seeks compensation in the amount of US$269,032 (Polish Zloty 3,405,816,353) for expenses incurred in maintaining performance bank guarantees for a project contract for the construction, execution, completion and maintenance of works on sections R7A and R7B of Expressway No. 1 in Iraq. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, the Panel recommends no compensation.

(b) Unpaid amounts due for section R/9 of Expressway No. 1

517. Dromex seeks compensation in the amount of US$8,754,359 (ID 2,727,135) for unpaid amounts due under a sub-contract for execution of works on section R/9 of Expressway No. 1. The claim is for fuel price increase (ID 2,543,630) and extra transportation for bitumen and oil (ID 183,505).

518. Dromex carried out the work which gives rise to this claim as the nominated sub-contractor of a Japanese contractor, namely Marubeni Corporation. The sub-contract was made on or about 15 September 1987. The Iraqi employer on the project was the State Corporation for Roads and Bridges.

519. According to Dromex, by some date in 1989, its work was completed, although the guarantee period was not yet in operation. Dromex contends that it sought to claim first from the Iraqi employer and second from Marubeni Corporation, but that both refused to meet those claims.

520. This claim is notably lacking in evidence which would enable the Panel to address it in detail. However, at least part of the claim relates to costs incurred prior to 2 May 1990 and is, therefore, outside the jurisdiction of the Commission. In addition, the claim filed by Marubeni Corporation with the Commission seeks reimbursement for substantial sums paid to Dromex to meet Dromex's increased costs on this project. Given both the above points and the poor quality generally of the evidence put forward by Dromex, the Panel is unable to recommend compensation for this claim.

(c) Loss and expenses incurred relating to the purchase of electric lighting poles

521. Dromex seeks compensation in the amount of US$20,926 (FRF 78,805 and Polish Zloty 67,025,135) in relation to electric lighting poles. The claim is for the cost of electric lighting poles as well as transportation and customs duties paid in respect of the electric lighting poles. The poles were purchased in June 1990 for section R/9 of Expressway No. 1 project. Dromex stated that the electric lighting poles were dispatched to Iraq, but were stopped in transit and returned to Poland. Dromex further stated that

the electric lighting poles remain in storage in Poland. According to Dromex, due to the special characteristics of the poles, they are not able to be resold or used for other purposes.

522. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. Dromex did not provide any evidence that would demonstrate that the poles were not able to be resold or used for other purposes. The Panel recommends no compensation.

(d) Unpaid amounts due under contract with Ministry of Housing

523. Dromex seeks compensation in the amount of US$78,533 (ID 48,930) (modified from it original claim in the amount of US$157,065) for outstanding contract payments under a contract with the Ministry of Housing of the Republic of Iraq.

524. On 18 July 1989, Dromex entered into a contract with the Ministry of Housing for the "sale of an existing railway line", plant, accessories and equipment and training of Iraqi personnel. (The Panel is doubtful that the description of the contract objects in English is an accurate one).

525. The Panel finds that the Ministry of Housing of the Republic of Iraq is an agency of the State of Iraq. The supporting documentation provided by Dromex indicates that the performance that created the debts in question occurred between January and April 1990. The Panel finds that the contract losses alleged by Dromex relate entirely to work that was performed prior to 2 May 1990.

526. The claim for contract losses under the contract with the Ministry of Housing is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(e) Unpaid amounts due under contract with State Establishment for Food Stuff Trading

527. Dromex seeks compensation in the amount of US$1,570,818 for unpaid amounts due under a contract for the supply of goods entered into with the State Establishment for Food Stuff Trading of the Republic of Iraq. The claim is for unpaid amounts in respect of goods that were delivered to the State Establishment for Food Stuff Trading and goods that were produced, but could not be shipped or otherwise sold.

528. The Panel finds that the loss claimed is compensable and is satisfied on the evidence presented that Dromex suffered the loss in question. It recommends compensation in the amount of US$1,570,818.

(f) Frustrated expenses incurred in preparing tender

529. Dromex seeks compensation in the amount of US$787,160 for expenses incurred in the preparation of a tender that could not be submitted, allegedly due to Iraq's invasion of Kuwait. Dromex stated that it entered into a consortium agreement with three companies from Brazil, Japan and Korea to submit a tender offer for the Um Qasr and Western Loop Railway Line Project. The tender closing date was 31 December 1990. The costs are said to have been incurred between May and November 1990.

530. Dromex asserted that the consortium had a "far better than average chance to be awarded the contract...". This statement was not supported by any evidence. Dromex did not provide any evidence that would establish that Dromex incurred the alleged expenditure. Dromex did not explain why the tender could not be submitted.

531. However, and in any event, in the view of the Panel, tendering and the cost thereof is a contractor's risk. That situation is not altered by assertions as to the likely outcome of the tendering process, however optimistic. It follows that there can be no direct causal link between Iraq's invasion and occupation of Kuwait and the expenditure incurred by Dromex. Indeed, the absence of a causal link is highlighted by the fact that some of the costs at least were incurred by Dromex, presumably voluntarily, after the commencement of hostilities. Accordingly, the Panel recommends no compensation.

3. Recommendation for contract losses

532. The Panel recommends compensation in the amount of US$1,570,818.

B. Loss of profits

533. Dromex seeks compensation in the amount of US$7,785,144 (ID 2,424,278) for loss of profits in respect of the contract for the construction of section 6 of Expressway No. 1 and the Ramadi Bridge. Dromex stated that it was intended to become the nominated sub-contractor to a Japanese contractor appointed to perform construction works on the project. Dromex alleged that the Project did not go ahead and it was not awarded the sub-contract as a result of Iraq's invasion and occupation of Kuwait. Dromex seeks compensation for loss of the profits which it expected to make under the project contract had the project gone ahead.

534. Applying the approach taken with respect to loss of profits for future projects set out in paragraphs 139 to 141, the Panel recommends no compensation.

C. Loss of tangible property

1. Facts and contentions

535. Dromex seeks compensation in the amount of US$17,899,770 for loss of tangible property.

2. Analysis and valuation

536. Dromex seeks compensation in the amount of US$17,676,221 for loss of vehicles, equipment and machinery that were allegedly confiscated from the Ramadi project site by the Iraqi authorities between May and September 1992.

537. Dromex seeks compensation in the total amount of US$160,352 (ID 49,954) for loss of food supplies and fire-fighting equipment. Dromex stated that the food supplies were either confiscated by Iraqi officers between January and August 1991 to supply the needs of the local population or spoiled through being incorrectly kept. Dromex stated that the fire-fighting equipment had to be discarded in September 1991 after it passed pre-determined "useful life" dates.

538. Dromex seeks compensation in the amount of US$44,907 for fuel that was allegedly taken by the Iraqi officers from stocks maintained at the Ramadi camp. Dromex stated that the theft of the fuel took place between February and April 1991.

539. Dromex seeks compensation in the amount of US$18,290 (ID 5,698) for loss of property and furnishings that were allegedly stolen from the Ramadi camp and Dromex's Baghdad office. The items included a photocopier, a dishwasher and a freezer. Dromex provided no other information with respect to its claim for this item.

3. Recommendation for loss of tangible property

540. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation for confiscation of equipment at Ramadi.

541. The Panel finds that Dromex did not provide sufficient evidence in support of the remaining claimed amounts. In respect of the claim for loss of property and furnishings that were allegedly stolen from the Ramadi camp, the Panel has difficulty in comprehending how a loss could have occurred, given the protection of the Ramadi camp referred to in paragraph 565, *infra*. The Panel recommends no compensation.

D. Payment or relief to others

1. Facts and contentions

542. Dromex seeks compensation in the total amount of US$1,278,298 for payment or relief to others. In its claim submission, Dromex described the losses claimed as "abandonment of activities".

2. Analysis and valuation

(a) Evacuation expenses

543. Dromex seeks compensation in the amount of US$138,982 (Polish Zloty 1,474,565,627, ID 7,486 and US$4,502) for expenses incurred in evacuating its personnel and their families from Iraq. The items included in the claim for evacuation expenses are the "increased costs" of evacuating its personnel from Iraq (US$117,722) and expenses incurred in relation to 35 employees who returned to Iraq between May and November 1991 to attend to Dromex's affairs (US$21,260).

(i) Evacuation of 174 employees and their families from Iraq

544. Dromex stated that the transportation costs incurred in evacuating its employees and their families were higher than normal transportation costs because of the necessity to use special routes, thereby avoiding potential safety risks, and because of the closure of some airports. Dromex's claim is for the increased costs incurred in excess of the transportation costs that it would have incurred under normal circumstances.

545. Dromex stated that 174 employees and their families were evacuated from Iraq in three groups.

546. Dromex stated that normal expenditure for the repatriation of its employees from Iraq to Warsaw would have been US$220 per person. Therefore, the total repatriation cost for 174 people would have amounted to US$38,280. Dromex deducted this amount from the total amount spent on evacuation (US$156,002). Therefore, Dromex claims US$117,722 for increased expenses incurred on evacuating its personnel from Iraq.

547. In addition to the receipts provided by Dromex in support of its claim, Dromex provided passenger lists for 113 people evacuated prior to January 1991 and 36 people who travelled from Istanbul to Warsaw on 18 January 1991. However, despite the request in the Questions to the Claimant, Dromex did not provide the names and details of all its employees evacuated or copies of its employees' passports showing Iraqi exit visas.

548. The Panel is satisfied that Dromex incurred a loss in evacuating its employees and their families from Iraq. However, the Panel recommends a reduced amount of compensation to reflect the documentation missing from the claim. The Panel recommends compensation in the amount of US$65,000.

(ii) 35 employees who returned to Iraq

549. Dromex stated that it incurred airfare, accommodation, transportation and visa expenses in relation to 35 employees who returned to Iraq after the cessation of hostilities to attend to Dromex's affairs. Dromex stated that three of its personnel arrived in Iraq on 19 May 1991, an additional 23 personnel arrived on 2 August 1991 and the remaining nine personnel arrived on 25 November 1991. Dromex provided a breakdown of the total

amount claimed (US$21,260), stating the original currencies of the loss as Polish Zloty 214,693,800, ID 828 and US$700.

550. The Panel finds that Dromex did not provide sufficient documentation in support of its claim or establish a direct link between its stated loss and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(b) Maintenance of personnel

551. Dromex seeks compensation in the amount of US$1,059,737 for expenses incurred in maintaining its personnel in Iraq from 1 August 1990 to 15 January 1991 (168 days) and 21 May 1991 to 2 May 1992 (345 days).

552. Dromex stated that it incurred actual losses in the amount of US$1,659,737 (ID 517,052). However, it received partial compensation in the amount of US$600,000 from a Japanese contractor and reduced the amount of its claim accordingly.

553. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(c) Wages paid to Iraqi personnel/legal fees

554. Dromex seeks compensation in the amount of US$79,579 (ID 24,791) for wages paid to Iraqi personnel from 15 January to 31 July 1991 and for legal fees. The amount claimed for wages paid is ID 21,541. The amount claimed for legal fees is ID 3,250, which represents a monthly retainer for 6.5 months at ID 500 per month.

555. Dromex stated that from 15 January to 31 July 1991 it was forced to pay its Iraqi personnel despite the suspension of Dromex's activities in Iraq. Dromex stated that the Iraqi personnel were supervising and guarding Dromex's activities. Dromex stated that these employees were involved in two activities. One was maintenance work on section R/9 of Expressway No. 1. This work was being done in the maintenance period for this section. The other activity was the re-export of Dromex's property to Jordan.

556. Dromex stated that the legal fees were paid to Iraqi legal counsel, who provided advice on the contents and effect of new legislation in Iraq and the regulatory measures of Iraqi authorities.

557. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

3. Recommendation for payment or relief to others

558. The Panel recommends US$65,000 for payment or relief to others.

E. Other losses

559. Dromex seeks compensation in the amount of US$926,900 for "other losses".

1. Analysis and valuation

(a) War risk insurance for employees

560. Dromex seeks compensation in the amount of US$307 (Polish Zloty 2,915,900) for the cost of additional war risk insurance purchased for its employees. Dromex stated that it purchased additional war risk insurance for the year 1991 for those employees who had not been repatriated from Iraq to Poland.

561. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(b) Employment of additional personnel

562. Dromex seeks compensation in the amount of US$29,949 (ID 9,330) for the cost of employing additional personnel to complete section R/9 of Expressway No. 1. Dromex stated that it was unable to send its own personnel to Iraq to complete the works as the situation at the project site was too dangerous.

563. Dromex did not demonstrate that the costs incurred in the employment of the ten Bulgarian workers exceeded the normal costs that were necessary for it to fulfil its obligations under the sub-contract for performance of works on section R/9 of Expressway No. 1.

564. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(c) Protection of camp at Ramadi

565. Dromex seeks compensation in the amount of US$176,276 (ID 54,744) for expenses incurred in engaging an Iraqi security firm to protect the Ramadi campsite between 15 January and 31 August 1991 and additional fire and theft insurance. The amount claimed for the protection of the camp is ID 49,744. The amount claimed for the additional fire and theft insurance is ID 5,000.

566. Dromex did not provide any evidence that it paid the claimed amount to the Iraqi security firm.

567. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish

the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. In addition, there is no sufficient basis on which the Panel can work out the quantum of the claim. Accordingly, the Panel recommends no compensation.

(d) Costs incurred during suspension period

568. Dromex seeks compensation in the amount of US$166,946 (ID 17,483 and US$110,824) for costs incurred during the period in which its activities in Iraq were suspended (15 January to 1 August 1991). The costs relate to renewal of the lease for Dromex's Baghdad office (ID 5,417), renewal of the Ramadi campsite lease (ID 8,342), an equipment lease (US$14,898), extension of a lease for a rest-house building (ID 1,125), extension of a pumping station and pipeline land lease (ID 2,600) and loss of the value of tyres (US$25,871) and storage batteries (US$70,055).

569. The Panel finds that Dromex did not provide sufficient evidence of its stated losses. The Panel further finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. To the extent that Dromex entered into lease agreements relating to property in Iraq after 2 August 1990, this was a voluntary decision on the part of Dromex which negates the causal connection between its losses claimed and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(e) Costs incurred after confiscation of assets by Iraqi authorities

570. Dromex seeks compensation in the amount of US$510,864 (ID 159,148) for costs incurred after the confiscation of its assets by the Iraqi authorities between May and September 1991. The claim includes salaries, travel expenses, spare parts, maintenance and rental of houses and foodstuffs. The claim appears to cover the period from May 1991 to December 1992.

571. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation.

(f) Customs penalties

572. Dromex seeks compensation in the amount of US$42,558 (ID 13,258) for additional penalties paid to the Iraqi custom authorities. The items claimed for include late submission of customs declaration for prolongation (ID 2,299), delay of car insurance (ID 239), new licence plate for cars (ID 220) and delay in submitting Dromex's 1990 accounts to the Diwan (ID 10,500).

573. The Panel finds that Dromex failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(g) Depreciation of bank deposits

574. Dromex withdrew its claim for this item on or about 1 December 1998.

2. Recommendation for other losses

575. The Panel recommends no compensation.

F. Summary of recommended compensation for Dromex

576. Based on its findings regarding Dromex' claim, the Panel recommends compensation in the amount of US$1,635,818. The Panel finds the date of loss to be 25 October 1990.

XVII. CHINA NONFERROUS METAL INDUSTRIES CORPORATION

577. China Nonferrous Metal Industries Foreign Engineering and Construction Corporation ("China Nonferrous") is a Chinese state-owned corporation involved in nonferrous metal projects abroad. It seeks compensation in the total amount of US$42,308,482 for contract losses, loss of profits, loss of tangible property, payment and relief to its employees and loss of cash and bank deposits. The alleged losses arose out of two 132kv underground cable projects in Iraq (Project No. HT-91/84 and Project No. HT-30/85; together the "cable projects") and a military camp project in Kuwait (the "Military Camp Project").

A. Contract losses in Iraq

1. Facts and contentions

578. China Nonferrous seeks compensation in the amount of US$29,124,617 for contract losses allegedly incurred on the cable projects in Iraq. China Nonferrous was a sub-contractor to the China State Construction Engineering Corporation (the "Chinese main contractor") on the cable projects.

2. Analysis and valuation

(a) Unpaid contractual amounts

(i) Project No. HT-91/84

579. China Nonferrous seeks compensation in the amount of US$13,234,236 (ID 4,124,242) for unpaid contractual amounts in respect of Project No. HT-91/84. The main project contract between the Ministry of Industry and Minerals of the Republic of Iraq, State Organization of Electricity, and the Chinese main contractor was dated 8 September 1985. The sub-contract between China Nonferrous and the Chinese main contractor was dated 13 September 1985. The period for completion of the works under the sub-contract was 24 months.

580. The takeover certificate was issued on 4 February 1988 and the final acceptance certificate was issued on 21 March 1989. China Nonferrous claims for unpaid work performed between 4 June 1986 and 18 July 1989.

581. The Panel finds that the Ministry of Industry and Minerals of the Republic of Iraq, State Organization of Electricity, is an agency of the State of Iraq. The Panel finds that the contract losses alleged by China Nonferrous relate entirely to work that was performed prior to 2 May 1990. The claim for contract losses under the contract for Project No. HT-91/84 is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(ii) Project No. HT-30/85

582. China Nonferrous seeks compensation in the amount of US$11,238,875 (ID 3,502,420) for unpaid contractual amounts in respect of Project No. HT-30/85. The main project contract between the Ministry of Industry of the Republic of Iraq, Major Electrical Projects Implementation, and the Chinese main contractor was dated 20 March 1989. The sub-contract between China Nonferrous and the Chinese main contractor was dated 18 May 1989. The period for completion of the project was 28 months from the date of opening the bank guarantee for the advance payment.

583. China Nonferrous stated that work under the sub-contract commenced in May 1990 and was ongoing at the time of Iraq's invasion of Kuwait. China Nonferrous estimated that the project was 48.21 per cent completed as at 2 August 1990.

584. China Nonferrous claims for unpaid work performed up to 2 August 1990. China Nonferrous calculated the claimed amount by taking the value of the allegedly completed contract works (ID 4,572,012), being 48.21 per cent of the total value of the sub-contract, and deducting ID 1,069,592, being the total amount paid to China Nonferrous.

585. The Panel, after careful consideration of the evidence provided, finds that China Nonferrous had completed work with a value of ID 2,898,538 up to 2 August 1990 and that applications for payment in respect of this work had been certified by the Iraqi employer. The Panel, therefore, recommends compensation in the amount of ID 2,898,538.

(b) Interest on deferred payments

586. China Nonferrous seeks compensation in the amount of US$3,514,000 for unpaid interest from 30 December 1986 to 30 December 1992 on deferred payments in respect of Project No. HT-91/84. China Nonferrous also seeks compensation in the amount of US$1,137,506 for unpaid interest from 30 December 1990 to 30 December 1992 on deferred payments in respect of Project No. HT-91/84.

587. For the reasons set out in the Panel's analysis of contractual arrangements to defer payments in paragraphs 21 to 23 and 72 to 91, the Panel recommends no compensation.

3. Recommendation for contract losses in Iraq

588. The Panel recommends compensation in the amount of US$9,301,087 (ID 2,898,538).

B. Contract losses in Kuwait

589. China Nonferrous seeks compensation in the amount of US$2,315,689 for contract losses allegedly incurred on the Military Camp Project in Kuwait.

590. China Nonferrous was a sub-contractor to Khalifa Daij El-Dabbous Brothers and Partners, a company incorporated in Kuwait (the "Kuwaiti main contractor"), on the Military Camp Project. The project entailed the construction and maintenance of the new National Guards Camp at Mishraf in Kuwait. Under the terms of the sub-contract, China Nonferrous agreed to execute all of the works under the main project contract. The value of the sub-contract was KD 4,875,600.

591. China Nonferrous gave some information in respect of the work on the Military Camp Project. However, the Panel finds that China Nonferrous did not provide sufficient evidence of its stated loss. Moreover, China Nonferrous did not explain the direct link between its inability to recover the costs incurred in respect of additional works on the Project and Iraq's invasion and occupation of Kuwait. China Nonferrous provided no evidence that the Kuwaiti employer was rendered insolvent as a consequence of the invasion and occupation. Accordingly, the Panel finds that China Nonferrous failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. The Panel recommends no compensation.

C. Loss of profits

592. China Nonferrous seeks compensation in the amount of US$4,249,555 for loss of profits in respect of Project No. HT-30/85 in Iraq (US$4,168,286) and the Military Camp Project in Kuwait (US$81,255).

593. China Nonferrous stated that its loss of profits was caused by the termination of the relevant project as a consequence of Iraq's invasion and occupation of Kuwait, which rendered it impossible for it to perform the remaining works. However, the Panel finds that China Nonferrous did not fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 133 to 138. It failed to provide evidence to support the proposition that it would have made a profit at all or, indeed, that it ever made a profit in its work. In the circumstances, the Panel is unable to recommend compensation.

594. The Panel recommends no compensation.

D. Loss of tangible property

1. Facts and contentions

595. China Nonferrous seeks compensation in the amount of US$4,741,405 for loss of tangible property.

2. Analysis and valuation

(a) Project No. HT-30/85 in Iraq

596. China Nonferrous seeks compensation in the amount of US$3,386,117 for loss of tangible property from the Project No. HT-30/85 site. The claim is for materials, including steel bars, cables and tyres, (US$3,008,464 = US$2,799,408 + ID 71,382) and equipment (US$377,652 = ID 117,689). China Nonferrous stated that the materials were requisitioned by the Iraqi authorities and taken away from the project site.

597. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation.

(b) Military Camp Project in Kuwait

598. China Nonferrous seeks compensation in the amount of US$1,355,288 for loss of tangible property from the Military Camp Project site in Kuwait. The claim is for materials in storage (US$894,078 = KD 255,451) and plant and equipment (US$461,210 = KD 131,774). China Nonferrous stated that the materials, plant and equipment were "taken away" following destruction of the project site.

599. The Panel has considered the evidence of ownership, cost and situation in Kuwait of the tangible assets provided by China Nonferrous in support of its stated loss. The Panel, after making an adjustment to the claimed amount to take account of consumables and possible write-offs, recommends compensation in the amount of KD 118,500.

3. Recommendation for loss of tangible property

600. The Panel recommends no compensation for tangible property in Iraq and US$410,035 (KD 118,500) for property located in Kuwait.

E. Payment or relief to others

1. Facts and contentions

601. China Nonferrous seeks compensation in the amount of US$384,402 for payment and relief provided to its employees.

2. Analysis and valuation

(a) Project No. HT-30/85

602. China Nonferrous seeks compensation in the amount of US$204,179 for the cost of evacuating 133 of its employees from the Project No. HT-30/85 site in Iraq. The claim is for the cost of airfares, accommodation, payments made to evacuees and "medical checks". The employees were evacuated from Iraq via Amman to Beijing on two flights. China Nonferrous

evacuated 40 employees on the first flight on 15 September 1990 and 93 employees on the second flight on 16 November 1990.

603. In support of its claim, China Nonferrous provided evidence in support of some but not all of the claimed items. However, the Panel recognises the importance of companies accepting responsibility for assisting their staff out of a theatre of war and, on the basis of such material as was supplied, the Panel has been able to arrive at the following recommendations for compensation:

(i) hotel expenses in Amman for 40 employees: JD 4,370;

(ii) airfares, medical checks and hotel costs for the remaining employees: JD 9,500, RMB 8,800, and US$64,000.

(b) Military Camp Project

604. China Nonferrous seeks compensation in the amount of US$180,223 for the cost of evacuating 133 of its employees from the Military Camp Project site in Kuwait. The claim is for the cost of airfares, accommodation and "medical checks". China Nonferrous stated that the 133 employees arrived in Jordan on 19 August 1990. The employees were said to have flown from Amman to Beijing on flights provided by Air China.

605. In support of its claim, China Nonferrous provided sufficient evidence to support portions of the stated losses. On this basis, the Panel is able to recommend compensation in the amounts of RMB 2,500 and US$88,000.

3. Recommendation for payment or relief to others

606. The Panel recommends compensation in the amount of US$175,536 (JD 13,870, RMB 11,300 and US$152,000).

F. Other financial losses

607. China Nonferrous seeks compensation in the amount of US$1,492,866 (ID 465,228) for financial losses in Iraq allegedly incurred in connection with Project No. HT-30/85. The claim is for loss of funds deposited in a bank account with the Rafidain Bank, Iraq.

608. Applying the approach taken with respect to loss of funds in bank accounts in Iraq set out in paragraphs 142 to 147, the Panel recommends no compensation.

G. Summary of recommended compensation for China Nonferrous

609. Based on its findings regarding China Nonferrous' claim, the Panel recommends compensation in the amount of US$9,886,658. So far as relevant, the Panel finds the date of loss to be 15 October 1990.

XVIII. NASSIR HAZZA AL-SUBAEI & BROTHERS CO., LTD.

610. Nassir Hazza Al-Subaei & Brothers Co., Ltd ("Nassir Hazza"), a Saudi Arabian corporation, is a general contractor that also trades in heavy equipment, appliances and spare parts for construction projects. Nassir Hazza was working on four different projects in Saudi Arabia at the time of Iraq's invasion of Kuwait.

611. Nassir Hazza seeks compensation in the total amount of US$11,699,415 (SAR 43,814,311) for contract losses and interest in connection with the Mina Abu Kamis Project, the Rush Housing Project at Dammam, the Abu Hidrieah Road Project and the Houses Ownership Project in Northern Dhahran and costs allegedly incurred in the preparation of its claim submission.

A. Contract losses

1. Facts and contentions

612. Nassir Hazza seeks compensation in the amount of SAR 43,445,060 for contract losses allegedly incurred in connection with the Mina Abu Kamis Project, the Rush Housing Project, the Abu Hidrieah Road Project and the Houses Ownership Project. Nassir Hazza also seeks compensation for interest on unpaid contractual amounts. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Mina Abu Kamis Project

613. Nassir Hazza seeks compensation in the amount of SAR 23,188,098 for contract losses in connection with the Mina Abu Kamis Project. On 22 April 1989, Nassir Hazza and the Ports Authority of the Kingdom of Saudi Arabia entered into a project contract for the construction of a Frontier Corps Berth and Associated Facilities at Ras Abu Khamis. The commencement date of the project was 29 September 1989. Nassir Hazza stated that, as a result of Iraq's invasion of Kuwait, work on the project was discontinued. It further stated that the cessation of work on the project caused it to suffer losses during the period from 2 August 1990 to 2 March 1991.

614. The items and amounts included in Nassir Hazza's claim are set out in the following table:

Table 7. Nassir Hazza's contract losses on the Mina Abu Kamis Project

Loss item	Amount claimed (SAR)
Salary payments and food costs	1,140,612
Repatriation costs	97,974
Transport costs	92,000
Maintenance costs of plant and equipment	1,242,500
Cost increases in the completion of marine works	10,188,713
Cost increase in the cost of electrical boards	527,522
Cost increase in electricity generation	3,682,608
Loss of profits	4,183,155
Overtime payments	234,593
Bank commissions	3,222,258
Total	24,611,935

615. Due to an arithmetical error in the claim, the total of the items included in the above table does not equal the total amount claimed for contract losses in connection with the Mina Abu Kamis Project.

616. The Panel finds that Nassir Hazza did not provide sufficient evidence of its stated losses. In addition, with respect to Nassir Hazza's claims for cost increases in the completion of marine works, cost increase in electricity generation and overtime payments, the Panel finds that Nassir Hazza failed to establish the causal connection between its stated losses and Iraq's invasion and occupation of Kuwait. With respect to Nassir Hazza's claim for loss of profits, the Panel finds that Nassir Hazza failed to submit sufficient evidence as set forth in paragraphs 133 to 138. Accordingly, the Panel recommends no compensation.

(b) Rush Housing Project

617. Nassir Hazza seeks compensation in the amount of SAR 5,254,486 for contract losses in connection with the Rush Housing Project. On 13 March 1989, Nassir Hazza and the Ministry of Public Works and Housing of the Kingdom of Saudi Arabia entered into a project contract for the provision of services relating to road construction works, water drainage and irrigation in connection with the Rush Housing Project. The commencement date of the project was 15 May 1989.

618. The items and amounts included in Nassir Hazza's claim are set out in the following table:

Table 8. Nassir Hazza's contract losses on the Rush Housing Project

Loss item	Amount claimed (SAR)
Salary payments and food costs	1,022,364
Unproductive rental payments	448,000
Increase in cost of materials	2,715,573
Damage to project site	600,000
Maintenance costs of plant and equipment	1,242,500
Total	6,028,437

619. Due to an arithmetical error in the claim, the total of the items included in the above table does not equal the total amount claimed for contract losses in connection with the Rush Housing Project.

620. The Panel finds that Nassir Hazza did not provide sufficient evidence of its stated losses. In addition, with respect to Nassir Hazza's claims for unproductive rental payments, increase in the cost of materials and the maintenance costs of plant and equipment, the Panel finds that Nassir Hazza failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(c) Abu Hidrieah Road Project

621. Nassir Hazza seeks compensation in the amount of SAR 4,160,082 for contract losses in connection with the Abu Hidrieah Road Project. On 25 August 1990, Nassir Hazza and the Ministry of Communications of the Kingdom of Saudi Arabia entered into a project contract for the execution of the remaining works on the Abu Hidrieah Road Project and repairs and removals relating to the contract, which had previously been withdrawn from another contractor. The commencement date of the project was 8 September 1990. Nassir Hazza stated that work on the project officially stopped in accordance with the instructions of the Ministry of Communications in a letter dated 19 January 1991. However, Nassir Hazza indicated that work may have stopped even earlier than this date.

622. The items and amounts included in Nassir Hazza's claim are set out in the following table:

Table 9. Nassir Hazza's contract losses on the Abu Hidrieah Road Project

Loss item	Amount claimed (SAR)
Salary payments and food costs	905,100
Unproductive rental payments	1,067,000
Increase in cost of materials	1,020,500
Damage to project site	780,000
Total	3,772,600

623. Due to an arithmetical error in the claim, the total of the items included in the above table does not equal the total amount claimed for contract losses in connection with the Abu Hidrieah Road Project.

624. The Panel finds that Nassir Hazza did not provide sufficient evidence of its stated losses. In addition, with respect to Nassir Hazza's claims for unproductive rental payments and increase in the cost of materials, the Panel finds that Nassir Hazza failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

(d) Houses Ownership Project

625. Nassir Hazza seeks compensation in the amount of SAR 10,842,394 for contract losses in connection with the Houses Ownership Project. On 14 November 1989, Nassir Hazza and the Saudi Arabian Oil Company entered into a project contract for work on the Houses Ownership Project. Nassir Hazza commenced work on 18 May 1991 and the contract was completed on 14 March 1992. Nassir Hazza stated that it was forced to stop work on the project after missiles began to fall close to the project site, thereby endangering the lives of labourers on the project. It did not state the date of the cessation of the work.

626. The items and amounts included in Nassir Hazza's claim are set out in the following table:

Table 10. Nassir Hazza's contract losses on the Houses Ownership Project

Loss item	Amount claimed (SAR)
Salary payments and food costs	1,914,242
Maintenance of equipment	945,000
Increase in cost of materials	4,855,611
Increased equipment and sub-contractor costs	1,650,674
Total	9,365,527

627. Due to an arithmetical error in the claim, the total of the items included in the above table does not equal the total amount claimed for contract losses in connection with the Houses Ownership Project.

628. The Panel finds that Nassir Hazza did not provide sufficient evidence of its stated losses. In addition, with respect to Nassir Hazza's claims for the maintenance of equipment, increase in the cost of materials and increased equipment and sub-contractor costs, the Panel finds that Nassir Hazza failed to establish the causal link between its stated losses and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

3. Recommendation for contract losses

629. The Panel recommends no compensation.

B. Summary of recommended compensation for Nassir Hazza

630. Based on its findings regarding Nassir Hazza's claim, the Panel recommends no compensation.

XIX. DODSAL PTE. LTD.

631. Dodsal Pte. Ltd ("Dodsal"), a Singaporean corporation, operates as a contractor on, and supplies manpower and equipment to, construction projects. Dodsal seeks compensation in the total amount of US$22,646,081 (US$17,373,569 and DM 8,235,663) for contract losses, loss of tangible property, and an unpaid refund of income tax. Dodsal allegedly suffered the losses when it was engaged as a contractor or a sub-contractor on construction projects in Iraq. The relevant projects were the Saddam Oil Field Development Project, the Anfal Gas Field Development Project and the Baiji Project.

A. Contract losses

1. Facts and contentions

632. Dodsal seeks compensation for contract losses allegedly incurred in connection with the Saddam Oil Field Development Project (DM 6,146,018) and the Anfal Gas Field Development Project (US$180,691).

633. In addition, Dodsal seeks compensation for interest on the unpaid contractual amounts. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) The Saddam Oil Field Development Project

634. Dodsal was engaged by Mannesmann Anlagenbau AG, Germany, as a sub-contractor on the Saddam Oil Field Development Project. The employer on the project was the North Oil Company, Iraq.

(i) Unpaid invoices

635. Dodsal seeks compensation in the amount of DM 5,089,781 in respect of four invoices that it alleges have not been paid by Mannesmann Anlagenbau AG, Germany. The relevant invoices were numbered 13/DM to 16/M and dated between 12 July and 28 November 1990. The invoices totalled the claimed amount of DM 5,089,781.

636. Dodsal provided a copy of a sub-contract dated 10 March 1989 entered into between Dodsal and Mannesmann Anlagenbau AG. The sub-contract states that work was to be completed by 15 June 1990. The completion dates for the project were amended by a Memorandum of Understanding executed by the parties on 10 July 1990 so as to enable substantial mechanical completion in the first week of November 1990 and the first delivery of oil to be made on 1 December 1990. Dodsal stated that the Saddam Oil Field Development Project could not be completed on time due to Iraq's invasion and occupation of Kuwait.

637. The Panel finds the value of invoice nos. 13/DM to 16/DM (excluding amounts withheld for retention) to be DM 4,071,825. Deducting the

unrecovered amount of DM 998,548 from this amount, the Panel arrives at a recommended figure of DM 3,073,277 for unpaid invoices.

638. The Panel recommends compensation in the amount of DM 3,073,277.

(ii) Unpaid retention monies

639. Dodsal seeks compensation in the amount of DM 1,056,237 for unpaid retention money. The sub-contract provided for retention money to be withheld by Mannesmann Anlagenbau AG at the rate of five per cent of the sub-contract price. It also provided for the retention money to be released to Dodsal within 45 days from the issue of the taking over certificate.

640. For the purposes of its claim, Dodsal calculated retention monies at the sub-contract rate of five per cent. It seems likely that the deduction of ten per cent of the sub-contract price in the invoices covers some item other than contractual retention, deducted at the rate of five per cent.

641. The amount deducted from invoice no. 16/DM for retention monies at the rate of ten per cent was DM 2,621,452. Based on the total price for the sub-contract of DM 36,200,000, the Panel finds that approximately 72 per cent of the project work was completed at the time invoice no. 16/DM was issued.

642. The Panel is satisfied that Dodsal was entitled to the retention monies withheld and that those monies were due to be released to Dodsal subsequent to 2 May 1990. The Panel recommends compensation in the amount of DM 1,056,237.

(b) The Anfal Gas Field Development Project

643. Dodsal seeks compensation in the amount of US$180,691 for contract losses allegedly incurred in connection with the Anfal Gas Field Development Project. Dodsal was the main contractor on the project. The project contract was entered into between Dodsal and the North Oil Company on 4 January 1990. The contract completion date stated in the project contract was 4 June 1990. Dodsal asserted that the contract completion date was subsequently extended to August 1990.

(i) Unpaid invoices

644. Dodsal seeks compensation in the amount of US$134,031 for unpaid contract amounts allegedly due from the North Oil Company. Dodsal's claim relates to invoice nos. ATGP-06 and ATGP-07 in the amounts of US$61,910 and US$72,121, respectively.

645. The Panel finds that all the relevant work was performed after 2 May 1990 and is, therefore, within its jurisdiction. The Panel is satisfied on the evidence provided that Dodsal incurred the stated loss and recommends compensation in the amount of US$134,031.

(ii) Unpaid retention monies

646. Dodsal seeks compensation in the amount of US$46,660 for unpaid retention money. The documents provided by Dodsal, including the project contract, do not indicate the percentage of the total contract value to be withheld as retention monies or the contract dates upon which the retention monies were to be released by the Iraqi employer.

647. In support of its claim, Dodsal relies on a letter dated 14 June 1995 from the North Oil Company addressed to Dodsal. The letter confirms that the claimed amount of US$46,660 for retention monies was outstanding to Dodsal and had not been paid

648. The Panel is satisfied that Dodsal was entitled to the retention monies withheld and that those monies were due to be released to Dodsal subsequent to 2 May 1990. The Panel recommends compensation in the amount of US$46,660.

3. Recommendation for contract losses

649. The Panel recommends compensation in the amount of US$2,824,426 (DM 4,129,514 and US$180,691) for contract losses.

B. Loss of tangible property

650. Dodsal seeks compensation in the amount of US$16,611,443 for loss of caravans and equipment. Dodsal alleged that the caravans and equipment were confiscated by the Iraqi authorities after they could not be removed from the project sites due to Iraq's invasion and occupation of Kuwait.

651. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, the Panel recommends no compensation.

C. Unpaid income tax refund

652. Dodsal seeks compensation in the amount of US$520,000 (ID 162,500 @ ID 1 = US$3.20) for income tax that was allegedly wrongly assessed by the Iraqi authorities and not subsequently refunded to Dodsal. In 1986, the Revenue Department of Iraq allegedly assessed Dodsal with ID 300,000 in income for the 1986 financial year in respect of revenue earned on the Baiji Project. Of the total amount assessed, Dodsal paid ID 162,500.

653. Dodsal stated that it subsequently appealed the decision of the Revenue Department. On 18 November 1990, the General Committee for Taxes operating under the auspices of the Ministry of Finance of the Republic of Iraq cancelled the 1986 assessment order and agreed to repay the "excess paid".

654. In support of its claim, Dodsal provided a copy of the order of the General Committee for Taxes dated 18 November 1990.

655. The Panel finds that Dodsal failed to explain the causal connection between its alleged loss and Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

D. Summary of recommended compensation for Dodsal

656. Based on its findings regarding Dodsal's claim, the Panel recommends compensation in the amount of US$2,824,426. The Panel finds the date of loss to be 2 August 1990.

XX. IMP INZENIRING, MONTAZA, PROIZVODNJA D.D.

657. IMP Inzeniring, Montaza, Proizvodnja d.d ("IMP"), a Slovenian corporation, is engaged in providing civil engineering contracting services to main contractors. IMP seeks compensation in the amount of US$62,541,905 for contract losses, loss of tangible property, storage costs and other losses in connection with spare parts, costs incurred in evacuating its personnel from Iraq and other financial costs allegedly incurred in connection with projects in Iraq.

658. At the time of Iraq's invasion of Kuwait, IMP was performing works as a sub-contractor on projects P-946, P-202D, P-B8 and P-B9 in Iraq. It employed approximately 200 workers on the project sites. All projects included in IMP's claim were of a military nature "concluded under the patronage and consent of the former Socialist Federal Republic of Yugoslavia".

659. IMP stated that no work was performed on the projects after 2 August 1990, "except for attempts to obtain various documents and rectification of deficiencies during the guarantee period".

A. Contract losses

660. IMP seeks compensation in the amount of US$48,470,926 for contract losses.

661. All the relevant project contracts with Iraqi entities were dated between 1979 and 1989. At this time, the Federal Directorate of Supply and Procurement of the former Yugoslavia ("FDSP") entered into the project contracts with the relevant Iraqi entity. FDSP then entered into arrangements with local contractors in the former Yugoslavia. Under these arrangements, the local contractor undertook the whole responsibility of the contract between FDSP and the Iraqi authority and became entitled to the benefit. Under the arrangements, the local contractor was obliged to sub-let nominated elements of the work.

1. Unpaid contract amounts

662. IMP seeks compensation in the amount of US$10,834,480 for unpaid contract amounts on several projects in Iraq.

(a) Contracts under which IMP was a sub-contractor to FDSP

663. IMP seeks compensation in the amount of US$4,786,988 for contract losses allegedly incurred on contracts under which it acted as a sub-contractor to FDSP. The relevant projects and amounts claimed are set out in the following table.

Table 11. IMP's unpaid amounts as FDSP sub-contractor

Project	Amount claimed (US$)
Project 201	1,030,437
Project 500	(223,560)
Project 202D3	1,161,953
Project KOL-7	1,803,084
Projects A and B	194,279
Project KOL-6	40,554
Project KOL-3	690,445
Project 700	89,796
Total	4,786,988

664. The Panel has carefully considered all the documentation filed by IMP in support of the claims in respect of these projects. The documentation makes clear that the work in every case was performed prior to 2 May 1990. It is, therefore, work that is not compensable under Security Council resolution 687. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(b) Contracts under which IMP was a sub-contractor to Pelagonija

665. IMP seeks compensation in the amount of US$1,374,550 for contract losses allegedly incurred on contracts under which it acted as a sub-contractor to Pelagonija, Macedonia. The relevant projects and amounts claimed are set out in the following table.

Table 12. IMP's unpaid amounts as Pelagonija sub-contractor

Project	Amount claimed (US$)
Services Workshops Projects (Projects 85742, 85000, 85770, 85772, 85773)	1,002,289
Project 946/Stage 1	372,261
Total	1,374,550

666. IMP makes a claim in respect of these projects. However, IMP stated that, subsequent to filing its claim with the Commission, it entered into a protocol with Pelagonija in relation to the amounts outstanding under the above projects. IMP provided a protocol dated 8 October 1994 between itself and Pelagonija, and a further protocol dated 14 October 1994 between itself, Pelagonija and three other sub-contractors. The protocols grant

Pelagonija authority to file a claim on behalf of the other sub-contractors on the projects, including IMP.

667. Pelagonija has filed a comprehensive claim for the same projects, which includes amounts claimed by IMP. The Panel has already considered the claim by Pelagonija and formed the view that Pelagonija's claim for unpaid contract amounts in respect of the Services Workshops Projects and Project 946 (Stage 1) related to work entirely performed prior to 2 May 1990 and was, therefore outside the jurisdiction of the Commission. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(c) Contracts under which IMP was a sub-contractor to Industrogradnja

668. IMP seeks compensation in the amount of US$3,393,433 for contract losses allegedly incurred on contracts under which it acted as a sub-contractor to Industrogradnja, Croatia. The relevant projects and amounts claimed are set out in the following table.

Table 13. IMP's unpaid amounts as Industrogradnja sub-contractor

Project	Amount claimed (US$)
Project 195	2,150,453
Project 196	1,242,980
Total	3,393,433

669. The Panel has carefully considered all the documentation filed by IMP in support of the claims in respect of these projects. The documentation makes clear that the work in every case was performed prior to 2 May 1990. It is, therefore, work that is not compensable under Security Council resolution 687. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

(d) Contracts with other contractors

670. IMP seeks compensation in the amount of US$1,279,509 for contract losses allegedly incurred on contracts under which it acted as a sub-contractor to other main contractors. The relevant projects and amounts claimed are set out in the following table.

Table 14. IMP's unpaid amounts as sub-contractor to other contractors

Project	Amount claimed (US$)
Project 77 (DUT Belgrade)	71,637
Project 202C (Energoprojekt, Belgrade)	23,084
Project KOL-7 (Bratstvo, Pucarevo)	120,618
Project 776 H (Ingra, Zagreb)	61,963
Project 202 B4 (Gradis, Llubljana)	453,282
Project 202 B4 (Jelovica, Llubljana)	445,323
Project 946/Stage 2 (Pelagonija, Skopje)	103,602
Total	1,279,509

671. For all of the relevant contracts, IMP only provided a spreadsheet setting out a description of the relevant contract, contract value, latest statement of account, payments received up to 30 June 1992 and the total amount claimed. IMP did not provide copies of the relevant contracts or other related documentation.

672. The Panel finds that IMP did not provide sufficient evidence of its stated losses. Accordingly, the Panel recommends no compensation.

2. Interest on deferred payments

673. IMP seeks compensation in the amount of US$8,307,310 for unpaid interest on overdue deferred payments that were payable pursuant to interstate deferred payment arrangements between the former Yugoslavia and Iraq. Interest is claimed from 1983 to 30 September 1993.

674. The claim relates to deferred payment arrangements entered into for contracts in respect of which IMP was a sub-contractor for FDSP, Pelagonija, Industrogradnja and other contractors. The following table sets out a breakdown of the claimed amounts.

Table 15. IMP's claim for interest on deferred payments

Project	Amount claimed (US$)
Projects where FDSP was the main contractor	4,041,461
Projects where Pelagonija was the main contractor	953,835
Projects where Industrogradnja was the main contractor	3,272,532
Other projects	39,482
Total	8,307,310

675. Having determined that the outstanding unpaid work relates entirely to work that was performed prior to 2 May 1990 or, in the case of the "other projects" could not be recommended for compensation by reason of the lack of evidence provided by IMP, the Panel finds that the amounts due under the credit arrangements for work performed on the above projects are deferred payment agreements. For the reasons set forth in the Panel's analysis of contractual arrangements to defer payments in paragraphs 72 to 91, the claim for interest on deferred payments is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

3. Unpaid credit facilities

676. IMP seeks compensation in the amount of US$29,329,136 for "unrepaid credit facilities". The claim is for unpaid principal and accrued interest under three project contracts under which IMP agreed to perform work on a credit basis (i.e. payment under those contracts was to take place on deferred payment terms). The relevant projects and amounts claimed in respect of each project are set out in the following table.

Table 16. IMP's claim for unpaid credit facilities

Project	Amount claimed (US$)
Project 202 D (FDSP)	733,469
Project 700 (FDSP)	3,962,595
Project 946/Stage 1 (Pelagonija)	24,633,072
Total	29,329,136

677. Having determined that the outstanding unpaid work relates entirely to work that was performed prior to 2 May 1990, the Panel finds that the amounts due under the credit arrangement for work performed on Project 946 (Stage 1) are deferred payment agreements. For the reasons set forth in

the Panel's analysis of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) in paragraphs 21 to 23 and in the Panel's analysis of contractual arrangements to defer payments in paragraphs 72 to 91, the claim for "unrepaid credit facilities" is outside the jurisdiction of the Commission and is not compensable under Security Council resolution 687 (1991). Accordingly, the Panel is unable to recommend compensation.

4. Recommendation for contract losses

678. The Panel recommends no compensation.

B. Business transaction and course of dealing

679. IMP seeks compensation in the amount of US$581,150 for "business transaction and course of dealing". The claim is for the net purchase value of spare parts (US$553,587) which could not be delivered after two project contracts in Iraq were terminated as a result of Iraq's invasion and occupation of Kuwait as well as warehouse charges for the storage of the spare parts (US$27,563).

1. Purchase value of spare parts

680. IMP claims the net purchase value of spare parts supplied for Project A (US$207,157) and Project 946 (US$346,429).

(a) Project A

681. The spare parts for Project A were to be supplied by IMP under the Project A contract, Annex 6 dated 24 May 1988 entered into between IMP and FDSP. The preamble of Annex 6 describes the spare parts as "spare parts for two year maintenance of the existing mechanical and electrical installations on Projects A and B in Iraq". The list of spare parts forming part of the offer for the supply of spare parts made by FDSP to the Ministry of Culture and Information of the Republic of Iraq dated 8 September 1987 was not enclosed with IMP's claim submission.

682. IMP asserted that the spare parts to be supplied for Project A were for the maintenance of special-purpose equipment and could not be sold or reused for any other purpose.

(b) Project 946

683. The spare parts for Project 946 were to be supplied by IMP under the Project 946 contract, Annex 3 dated 24 March 1990 between FDSP and Auqba Bin General Establishment. The preamble of Annex 3 describes the spare parts as, "spare parts dedicated for the installation equipment at Project 946 ..., materials and spare office furniture ...". Appendix No. 1B to Annex 3 lists the spare parts for mechanical equipment. IMP did not provide Appendix No. 1A (specification of the spare parts for electrical equipment) and No. 2 (specification of materials and spare office furniture). The delivery period specified in the offer for the supply of

spare parts made by FDSP to Auqba Bin General Establishment was six months from the date of opening the letter of credit, which occurred on 8 May 1990.

684. The Panel finds that IMP did not provide sufficient evidence in support of its claim. The evidence provided indicates that some of the spare parts were purchased after 2 August 1990. In respect of those spare parts, the Panel finds that IMP failed to establish a direct link between its stated losses and Iraq's invasion and occupation of Kuwait. IMP offered no explanation as to why the spare parts could not be sold or reused. Accordingly, the Panel recommends no compensation.

2. Storage charges

685. IMP claims warehouse charges for the storage of the spare parts which could not be delivered to Project A (storage in Austria from 1 September 1990 to 30 September 1993: US$13,717) and for Project 946 (storage in Slovenia from 1 July 1990 to 30 September 1993: US$13,846).

686. The Panel finds that IMP did not provide sufficient evidence in support of its claim. Further, IMP provided no evidence that it has paid the amounts in question. The Panel recommends no compensation.

3. Recommendation for business transaction and course of dealing

687. The Panel recommends no compensation.

C. Loss of tangible property

688. IMP seeks compensation in the amount of US$9,856,452 for the loss of prefabricated site facilities, equipment, material and spare parts that were allegedly left at the Abu Ghraib project site. IMP stated that, on 16 April 1992, the Iraqi authorities confiscated all of its property that was located at the Abu Ghraib project site.

689. Applying the approach taken with respect to the confiscation of tangible property by the Iraqi authorities after the liberation of Kuwait set out in paragraph 154, and by reason of the lack of evidence provided in support of the claim, the Panel recommends no compensation.

D. Payment or relief to others

1. Facts and contentions

690. IMP seeks compensation in the amount of US$1,072,629 for payment and relief to others. The claim includes the cost of evacuating 211 employees from Iraq to Ljublijana (US$141,392), compensation to the 211 employees (US$924,953) and the cost of evacuating 12 employees of IMP's sub-contractor, Iskra Kumanovo from Iraq to Skopje, Macedonia (US$6,284; original currency of loss: 70,251 Yugoslav dinars).

2. Analysis and valuation

(a) Cost of evacuating 211 employees from Iraq to Ljublijana

691. IMP stated that its employees were evacuated from Iraq in several groups between 12 August and November 1990. The amount claimed was calculated at US$670.10 per person. The claim includes border and airport taxes, war risk insurance premiums and bus and airfare costs.

692. While one would not expect a very detailed level of documentary substantiation for the costs incurred in moving people out of a theatre of war, nonetheless, IMP submitted incomplete supporting records. However, on the basis of such material as was supplied, the Panel recommends the sum of US$450 per person for 192 persons evacuated from Iraq. The Panel finds that the repatriation to Yugoslavia of 19 personnel prior to 2 August 1990 could not have been causally connected to Iraq's invasion and occupation of Kuwait.

693. The Panel recommends compensation in the amount of US$86,400.

(b) Compensation paid to 211 evacuated employees

694. This claim is for salary costs and the cost of providing food and accommodation to IMP's workers who were evacuated from Iraq. The compensation was allegedly made to the employees for their "delayed stay in Iraq and the costs incurred due to waiting for work in Slovenia". IMP calculated the salary component of its claim as two months' salary for each employee (using the average salary for July 1990, which it asserted to be US$2,192).

695. The Panel found that the evidentiary material and explanations provided by IMP were, in many cases, difficult to follow. The Panel, therefore, recommends compensation based on the payroll summary provided by IMP using IMP's average two month employee salary. The Panel recommends compensation in the amount of US$336,314.

(c) Cost of evacuating 12 employees of IMP's Macedonian sub-contractor

696. IMP seeks compensation for the costs incurred by it in evacuating 12 employees of its Macedonian sub-contractor, Iskra Kumanovo, from Iraq to Skopje, Macedonia, via Amman. IMP stated that it provided this assistance to 12 employees of Iskra Kumanovo upon the request of the latter. In November 1990, after the return of Iskra Kumanovo's workers, IMP invoiced Iskra Kumanovo for the amounts incurred. However, IMP stated that the amounts invoiced were not paid by Iskra Kumanovo.

697. The Panel is satisfied on the evidence provided that IMP incurred the stated loss and recommends compensation in the amount of US$6,284.

3. Recommendation for payment or relief to others

698. The Panel recommends compensation in the amount of US$428,998.

E. "Other losses"

699. IMP seeks compensation in the amount of US$2,558,558 for other losses, including the "cost of protection of interests and property" (US$335,073), loss of earnings due to the termination of contracts for the supply of spare parts (US$453,898), costs relating to financing the purchase of spare parts (US$204,933), foreign exchange guarantees (US$814,654) and overdue instalments of deferred payment agreements sold at discount (US$750,000).

700. The claim for the "cost of protection of interests and property" is a claim for the costs allegedly incurred by IMP in paying salaries and other expenses of three employees responsible for the protection of the property and interests of IMP in Iraq. Included in the claim is a claim for hired Egyptian labour, rentals and other costs incurred in Iraq, however, it failed to provide details of the amounts claimed or evidence in support of these items. IMP stated that the costs were incurred during the period August 1990 to January 1993.

701. The Panel finds that the salary and travelling costs of one employee who remained in Iraq during Iraq's occupation of Kuwait in order to protect IMP's interests were a direct result of Iraq's invasion and occupation of Kuwait. However, the Panel limits its finding with respect to this employee to the period of Iraq's occupation of Kuwait (2 August 1990 to 2 March 1991).

702. In respect of the remaining period from 2 March 1991 to January 1993 for the relevant employee and in respect of the remaining two employees, the Panel finds that IMP failed to establish a causal connection between the amounts claimed and Iraq's invasion and occupation of Kuwait and to demonstrate how the costs incurred exceeded those that would have been incurred in any event in the absence of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends compensation in the amount of US$16,000.

703. IMP also claims for (a) loss of profits and "costs of gathering offers and cancelling orders" for the contracts for the supply of spare parts to Project 946/Stage 1 (US$358,564) and Project A (US$95,334); (b) interest on monies that IMP allegedly borrowed to finance the purchase of spare parts for Project 946/Stage 1 and Project A; and (c) "lost" good performance bonds for Project B8/9 (US$175,948) and Project A (US$590,367) as well as the costs of the bank guarantees (US$48,339).

704. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108 and the approach taken with respect to loss of profits on a particular project set out in paragraphs 133 to 138, the Panel recommends no compensation for these losses.

705. IMP stated that upon the proposal of FDSP and pursuant to a decree issued by the Government of the Former Yugoslavia, the Yugoslav Bank for International Economic Cooperation (the JUMBES Bank) partially purchased some of the overdue payments under the Iraqi project contracts at a 30 per

cent discount, thus resulting in a loss for IMP. IMP alleged that, but for Iraq's invasion and occupation of Kuwait, the full amount of the funds (US$750,000) would have been paid to IMP. IMP's alleged losses were incurred in its capacity as a sub-contractor to FDSP and Industrogradnja.

706. The documentation provided by IMP makes clear that the work to which the deferred payment agreements related was performed prior to 2 May 1990. The amounts claimed are, therefore, not compensable under Security Council resolution 687. Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation.

707. The Panel recommends compensation in the amount of US$16,000.

F. Summary of recommended compensation for IMP

708. Based on its findings regarding IMP's claim, the Panel recommends compensation in the amount of US$444,998. The Panel finds the date of loss to be 1 October 1990.

XXI. STFA ELTA ELEKTRIK TESISLERI A.S.

709. STFA ELTA ELEKTRIK TESISLERI A.S. ("STFA ELTA "), a Turkish corporation, specialises in the construction of medium voltage and high voltage overhead lines, hydroelectric and thermal power plants, transformer substations and electrical and instrumentation systems of industrial plant. At the time of Iraq's invasion of Kuwait, STFA ELTA was performing work on the turnkey projects in Iraq set out in the following table:

Table 17. STFA ELTA's claim

Project name	Nature of project	Description in report
Project No. SS-5	132kv 2 Line Bays Extension of Habbaniye, Yousufiya and Old Nassiriya Substations	"Project A"
Project No. SS-8/Ext.	132kv 2 Cable Bays Extension of Najibiya Powerstation and Bab-al-Zubair Substation	"Project B"
Project No. SG.SS-9.1	Extension of Zakho Substation	"Project C"
Project No. SS-12	132kv Substations	"Project D"
Project No. SS-12/A	33kv and 11kv MV cables and accessories	"Project E"

710. STFA ELTA seeks compensation in the total amount of US$14,782,121 for contract losses, loss of profits, loss of tangible property and bank guarantee commissions.

A. Contract losses

1. Facts and contentions

711. STFA ELTA seeks compensation in the amount of US$5,304,898 for contract losses.

712. STFA ELTA also seeks compensation in the amount of US$2,668,556 for interest on the unpaid promissory notes and US$1,579,943 for interest allegedly paid on foreign currency loans from 2 August 1990 until 17 October 1996.

713. For the reasons stated in paragraph 37, the Panel does not address the issue of compensability of claims for interest.

2. Analysis and valuation

(a) Unpaid promissory notes

714. STFA ELTA seeks compensation in the amount of US$5,128,582 for unpaid promissory notes issued in respect of Projects A, B and C as well as three other projects in Iraq.

715. STFA ELTA stated that, for Project A, eight notes totalling US$2,575,300 were issued, for Project B, six notes totalling US$990,565 were issued, for Project C, seven notes totalling US$1,372,987 were issued, and for the remaining three projects, three notes totalling US$189,730 were issued. The issue dates of the promissory notes range from 16 June 1987 to 6 August 1990. All promissory notes were due for payment two years after their respective dates of issue.

716. The Panel, after examining the evidence provided by STFA ELTA, finds that the vast majority of the promissory notes the subject of STFA ELTA's claim relate to work that was entirely performed prior to 2 May 1990. These promissory notes are outside the jurisdiction of the Commission and are not compensable under Security Council resolution 687 (1991). Accordingly, applying the approach taken with respect to the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) set out in paragraphs 21 to 23, the Panel is unable to recommend compensation for these promissory notes. Only promissory note no. 24 issued in respect of Project B on 6 August 1990, with a value of US$234,545 was issued in respect of work performed subsequent to 2 May 1990. The Panel recommends compensation in the amount of US$234,545 in respect of promissory note no. 24.

(b) Unpaid retention money

717. STFA ELTA seeks compensation in the amount of US$176,316 for retention money allegedly withheld by the Iraqi employer on Projects A and B. Under the contracts for Projects A and B, ten per cent of the monthly progress payments (denominated in Iraqi dinars and foreign currency) were withheld as retention money. The payment terms applicable to the contracts state that the foreign currency component of the retention money was to be paid to STFA ELTA upon the issue of the taking over certificate for the projects. The payment terms further state that half of the Iraqi dinar component of the retention money was to be paid to STFA ELTA upon the issue of the taking over certificate and the other half upon the issue of the final acceptance certificate for the projects.

718. STFA ELTA stated that the work on Project A was completed on 5 May 1990 and the work on Project B on 7 June 1990. STFA ELTA did not provide copies of the taking over certificate or the final acceptance certificate for the projects, which would constitute a formal recognition by the Iraqi employer that STFA ELTA was entitled to payment of the retention money under the project contracts. Nonetheless, there is sufficient information before the Panel to enable it to determine that STFA ELTA had carried out work on the two projects and that sums had been retained from the full

remuneration for that work. In those circumstances, and applying the approach taken with respect to losses arising as a result of unpaid retentions set out in paragraphs 92 to 98, the Panel is able to conclude that STFA ELTA has an entitlement now to receive the retained sums. The Panel recommends compensation in the amount of US$176,316.

3. Recommendation for contract losses

719. The Panel recommends compensation in the amount of US$410,861.

B. Loss of profits

720. STFA ELTA seeks compensation in the amount of US$4,674,707 for loss of profits on Projects D and E. STFA ELTA calculated its loss of profits as 10 per cent of the contract value for Projects D and E. STFA ELTA stated that the contracts for Projects D and E could not be executed as a result of Iraq's invasion and occupation of Kuwait, and that it was thereby deprived of its anticipated profits on those projects.

721. The Panel finds that STFA ELTA failed to fulfil the evidentiary standard for loss of profits claims as set out in paragraphs 133 to 138. Accordingly, the Panel recommends no compensation.

C. Loss of tangible property

722. STFA ELTA seeks compensation in the amount of US$200,214 for loss of tangible assets that it allegedly abandoned in Iraq after Iraq's invasion and occupation of Kuwait.

723. In support of its claim, STFA ELTA provided a balance sheet dated 31 July 1990 for its branch in Iraq. The balance sheet, which was certified by the Iraqi authorities on 24 September 1990, lists fixed assets with a total value of ID 62,394. STFA ELTA also provided copies of schedules of fixed assets listing individual items, together with their quantity and value in Iraqi dinars. The total of the individual items listed corresponds with the value of fixed assets stated on the balance sheet.

724. Despite a specific request from the secretariat to provide evidence of proof of ownership and cost of the tangible property, STFA ELTA failed to provide such proof.

725. Although the balance sheet provided by STFA ELTA indicates that the assets were in Iraq as at 2 August 1990, the Panel finds that STFA ELTA did not provide sufficient evidence of its ownership of, or the cost of, the assets. Accordingly, the Panel recommends no compensation.

D. Bank guarantee commissions

726. STFA ELTA seeks compensation in the amount of US$353,803 for commissions paid to banks from 30 September 1990 to 17 October 1996 in respect of four bank guarantees. The bank guarantees were issued in favour of Iraqi employers on Projects A, B and D. STFA ELTA stated that, despite

repeated requests to Turkish Banks to release the guarantees, they could not be released, as the Iraqi banks insisted on their extension.

727. The nature of STFA ELTA's claim for this item is not identifiable from STFA ELTA's claim submission. STFA ELTA did not explain how it calculated the claimed amount. In addition, STFA ELTA did not explain the causal link between its stated loss and Iraq's invasion and occupation of Kuwait.

728. Applying the approach taken with respect to guarantees, bonds and like securities set out in paragraphs 99 to 108, the Panel recommends no compensation.

E. Summary of recommended compensation for STFA ELTA

729. Based on its findings regarding STFA ELTA's claim, the Panel recommends compensation in the amount of US$410,861. The Panel finds the date of loss to be 2 August 1990.

XXII. ABB LUMMUS CREST INC.

730. ABB Lummus Crest Inc. ("ABB Lummus"), a United States corporation, entered into a joint venture with Thyssen Rheinstahl Technik GmbH ("Thyssen"), a German corporation, in 1976 (the "joint venture"). ABB Lummus, on behalf of the joint venture, seeks compensation in the amount of US$28,600,308 (modified from the original claim in the amount of US$30,886,852) for contract losses, loss of tangible property, "project shutdown expenses" and expropriated intangible property in connection with work undertaken. Documents submitted with the claim indicate that both Thyssen and the German Government gave their consent to ABB Lummus filing the claim on behalf of the joint venture.

731. The Project on which the joint venture was engaged was the design, construction, commissioning and start-up of a large petrochemicals production facility located near Basrah, Iraq (the "PC-1 Project"). As will be seen, the history of this project is lengthy. Various agreements were reached between the joint venture and successive ministries in Iraq (collectively referred to as the "Ministry").

732. It is helpful to begin with a chronology of the PC-1 Project. The first event was a contract between the Ministry and the joint venture dated 24 February 1976 (the "1976 Agreement"). The joint venture stated that work under the 1976 Agreement went forward until September 1980, when hostilities between Iraq and Iran commenced. All personnel were evacuated and the project was shut down as a consequence.

733. Subsequently, between 1983 and 1987 a restart agreement was negotiated between the joint venture and the Ministry (the "Restart Agreement").

734. Under the Restart Agreement, the joint venture's work was scheduled to be completed by 31 March 1991. All costs incurred and services performed outside Iraq, and 80 per cent of expatriate job site personnel costs, were payable in United States dollars.

735. Work continued under the Restart Agreement until 2 August 1990, when the Ministry ordered the shut-down of the PC-1 Project. Shutdown was completed in September 1990.

736. During the life of the Restart Agreement, three events occurred which ought to be noted.

737. Firstly, in mid-1989, the parties agreed on the rescheduling of the payment terms of the United States dollar element of the Restart Agreement. The new arrangement involved a barter of PC-1 Project products for the United States dollar value of the services and materials provided by the joint venture.

738. Secondly, during the latter part of 1989, negotiations went forward on a two year agreement whereby the Ministry would guarantee substantial shipments of resins from the PC-1 Project to a representative of the joint

venture. The object was to provide products which could be sold with the aim of the net proceeds accruing to the joint venture. The aim of the two year agreement was to give purpose to the barter agreement.

739. The two year agreement (the "Product Off-Take Agreement") was entered into on 9 January 1990. However, just before this occurred, the Ministry informed the joint venture that all United States dollar proceeds collected by the joint venture's designated representative, (an affiliate of Thyssen), from the sale of the PC-1 Project products had to be deposited in an Iraqi bank account to comply with Iraqi foreign currency controls. Shortly after the Product Off-Take Agreement was executed, minutes of a meeting dated 11 January 1990 were signed by both parties recording both parties' obligations and the joint venture's exclusive interest in the proceeds.

740. Shipment of polymer resins under the Product Off-Take Agreement commenced in March 1990. These shipments continued until 2 August 1990 when the Ministry ordered a shut down of the PC-1 Project.

741. Finally, during the early part of 1990, negotiations went forward on a supplemental agreement designed to detail the method of disbursing to the joint venture the United States dollar proceeds from the Product Off-Take Agreement. Under the proposed supplemental agreement, the joint venture was to retain control over the proceeds from the product sales by the joint venture's representative through the use of a secure escrow account.

742. This proposal was specifically approved on 21 July 1990 by Hussein Kamal Hassan, Iraq's then Minister of Industry and Minerals. An informal agreement was executed on 22 July 1990 evidenced by the signing of minutes by the parties (the "22 July 1990 Agreement"). It was planned to open the secure escrow account shortly after the execution of the agreement and, for this purpose, a senior official from the Ministry planned to travel to Düsseldorf. However, this trip was cancelled as a result of Iraq's invasion and occupation of Kuwait.

743. As part of the 22 July 1990 Agreement, the Ministry agreed to pay the amount of US$19,910,000 to the joint venture. The agreed amount was based on invoices for services and materials that the joint venture had presented to the Ministry and the State Establishment for Petrochemical Industries, which were identified by invoice number and amount in the joint venture's June and July Field Financial Reports.

A. Contract losses

744. The joint venture seeks compensation in the total amount of US$20,803,630 (modified from the original claim in the amount of US$22,798,863) for contract losses. The total amount claimed comprises US$18,085,312 for product off-take proceeds out of a total of US$19,910,000 agreed upon by both parties in the 22 July 1990 Agreement and US$2,773,318 for services and materials provided by the joint venture to the PC-1 Project under the Restart Agreement which had not been invoiced in time to be included in the 22 July 1990 Agreement. In its revised claim

(b) Materials supplied by the joint venture to the PC-1 Project from Kuwait

752. The joint venture stated that the relevant invoice for this item is located in Iraq and that it has been denied access to supporting documentation. The joint venture seeks to evidence this claim by way of affidavit. However, and with all respect to the deponents, the absence of any documentary support either as to the relevant supply or as to the date of the supply means that the Panel, if it was to enter a favourable recommendation, would be relying on the assertion of the joint venture. This is not a course the Panel is prepared to follow, especially where the assumption goes to jurisdiction as well as to quantum.

(c) Miscellaneous supplies, equipment and services procured by the joint venture in Kuwait

753. The joint venture provided two supporting invoices dated 20 and 31 October 1990 for US$9,304 and US$30,751. In the view of the Panel, there is no sufficient evidence before it upon which it could confidently be stated that any sum was in respect of work executed after 2 May 1990 and in respect of which there ought to be a positive recommendation. The joint venture stated that a third invoice (for an amount of US$3,849) is still at the PC-1 Project site.

(d) Home office engineering support provided by the joint venture from the United States prior to July 1990

754. The joint venture provided 27 monthly time sheet analyses. The time sheets total 10,639 hours at an overall cost of US$705,985. A review of the time sheets indicates that most of the relevant work was performed prior to 2 May 1990, even though the invoices were not presented until after 2 May 1990. The Panel finds that only the amount of US$215,332 relates to work performed after 2 May 1990, and, accordingly, that only this amount should be recommended for compensation.

(e) Home office engineering support provided by the joint venture from the United States during July 1990

755. The joint venture provided a single invoice dated 1 August 1990 issued by ABB Lummus to the joint venture. The invoice relates to labour charges, telephone, telex, cable and copying charges and overheads. It is supported by computer-generated payroll extracts. The joint venture did not state whether the issue of such invoices by parties to the joint venture was a normal procedure.

756. The Panel finds that the joint venture did not provide sufficient evidence of its stated losses.

(f) Recruiting and field orientation services

757. The joint venture provided an invoice dated 18 July 1990 for the amount claimed (US$269,306) as well as other documents listing time and

expenses recorded. A review of the documentation provided indicates that almost all of the time and expenses involved relate to work performed in 1988 and 1989.

758. The Panel finds that only the amount of US$1,103 relates to work performed after 2 May 1990, and, accordingly, that only this amount should be recommended for compensation.

(g) PC-1 Project "debottlenecking" (expansion) engineering studies

759. The joint venture provided an invoice dated 7 July 1990 addressed to the Ministry for the amount claimed (US$473,495). The joint venture also provided related correspondence and supporting documentation. The supporting documentation indicates that the work was performed between January and September 1989.

760. The Panel finds that the claim for this item is outside the jurisdiction of the Commission as it relates to work performed prior to 2 May 1990.

(h) Home office coordination services performed by the joint venture in July 1990

761. The joint venture provided an invoice dated 1 August 1990 for the amount claimed (US$89,000). The invoice relates mainly to courier charges dated between 6 and 20 August 1988. The amount claimed was agreed in clause 4.3 of the Restart Agreement as a monthly fixed charge to be paid by the Iraqi employer from the effective date of the Restart Agreement (6 October 1987) until final acceptance.

762. The Panel finds that the claim for this item is outside the jurisdiction of the Commission as it relates to work performed prior to 2 May 1990.

3. Recommendation for contract losses

763. The Panel recommends compensation in the amount of US$1,597,762.

B. Loss of tangible property

1. Facts and contentions

764. The joint venture seeks compensation in the amount of US$680,000 for loss of tangible property, including vehicles, kitchen equipment, computer hardware and software, stereo and television equipment, sea containers, food and beverages.

765. The items were allegedly acquired by the joint venture for use in the performance of the Restart Agreement and were located at the PC-1 Project campsite at the time of the departure of the hostages in December 1990. The joint venture stated that when the joint venture's PC-1 Project site personnel were released, they departed Iraq without valuable tangible

property owned by the joint venture, which had been under their supervision and control prior to the invasion. According to the joint venture, the hostages were not permitted to arrange for the orderly removal of such property from Iraq. The joint venture further stated that it believed that the property was abandoned, destroyed, removed, consumed, misappropriated and expropriated by the Government of Iraq.

2. Analysis and valuation

766. The joint venture stated that the records relating to the tangible property remain at the PC-1 Project campsite, and the Ministry and the State Establishment for Petrochemical Industries have refused the joint venture access to these and all other site records. In support of this item, the joint venture provided affidavits by four of its former senior employees who had first-hand involvement with Project PC-1.

767. However, and again with all respect to the deponents, the absence of any documentary support either as to the ownership, age or value of the tangible assets in question means that the Panel, if it was to enter a favourable recommendation, would be relying on the assertion of the joint venture. This is not a course the Panel is prepared to follow.

768. The Panel finds that the joint venture provided sufficient evidence (in the form of an export licence dated July 1988) in respect of hardware purchased by the joint venture for GBP 26,736. Taking into account the age and useable life of the hardware, the Panel recommends compensation in the amount of GBP 16,042.

3. Recommendation for loss of tangible property

769. The Panel recommends compensation in the amount of US$30,498 (GBP 16,042).

C. "Project shutdown expenses"

1. Facts and contentions

770. The joint venture seeks compensation in the amount of US$4,135,978 (modified from the original claim in the amount of US$4,427,290) for expenses incurred in the shutdown of the PC-1 Project which was ordered on or about 2 August and which was completed in September 1990. Some of the shutdown expenses claimed were incurred by the joint venture in 1991 (including after 2 March 1991).

771. The amounts claimed are reimbursable project expenses under the Restart Agreement and are, therefore, compensable under the 22 July 1990 Agreement. The joint venture's case is that it "took all reasonable action to limit and mitigate its losses, [however] substantial out of pocket job site and home office costs were incurred".

772. The individual items forming part of the claim for "project shutdown expenses" are home office shutdown expenses, local (Iraq) labour costs and costs of sustaining the hostages.

773. The individual items forming part of the claim for "project shutdown expenses" are set out in the following table:

Table 19. ABB Lummus' claim for "project shutdown expenses"

Loss item	Amount claimed (US$)
Home-office shutdown expenses	
Labour costs (USA)	911,505
Labour costs (Germany)	458,064
Home office non-payroll costs (USA)	390,495
Home office non-payroll costs (Germany)	761,845
Materials costs (USA)	199,300
Materials costs (Germany)	854,556
Sub-total home-office shutdown expenses:	3,575,765
Local (Iraq) labour costs	61,622
Costs of sustaining the hostages	498,591 (Original currency of loss: ID 154,842)
Total	4,135,978

2. Analysis and valuation

(a) Home-office shutdown expenses/Local (Iraq) labour costs

774. In support of these two claims, the joint venture provided voluminous and extensive documentation. Indeed, the Panel has little doubt that, by one means or another, the joint venture certainly spent substantial sums of money, as recorded in the invoices and other materials supplied to it. The Panel's problem is its inability to identify a clear line of causation between the instruction to shut down and the invoices supplied. In the absence of such a line, the Panel is unable to make a recommendation for compensation.

(b) Costs of sustaining the hostages

775. In support of its claim, the joint venture provided:

(i) a list of names of 26 expatriate staff who were being held at the PC-1 Project site as of 10 August 1990;

(ii) a comparison of cash balances in its Iraqi bank accounts between the end of July and the end of December 1990;

(iii) internal memoranda; and

(iv) affidavits sworn by several of its senior staff.

776. Having considered this material, the Panel is of the opinion that it is able to recommend compensation in the amount of ID 154,842.

3. Recommendation for "project shutdown expenses"

777. The Panel recommends compensation in the amount of US$497,884 (ID 154,842).

D. Expropriated intangible property

778. The joint venture seeks compensation in the amount of US$2,980,699 for intangible property allegedly expropriated by the Iraqi authorities. The property comprises bank deposits (ID 125,683) and "finally adjudicated customs refunds" (ID 800,000) belonging to the joint venture. The joint venture stated that the Iraqi authorities denied the joint venture access to, and ultimately confiscated, those funds.

779. Both these items are, in effect, claims for Iraqi dinars. While claims for Iraqi dinars in connection with hostage expenses or the repatriation of staff may be acceptable, otherwise the principle is as set out in paragraphs 142 to 152. In addition, in this case, the customs claim is deficient by reason of the absence of a copy of the court order, and both claims lack a clear causal connection.

780. The Panel recommends no compensation.

E. Summary of recommended compensation for ABB Lummus

781. Based on its findings regarding ABB Lummus' claim, the Panel recommends compensation in the amount of US$2,126,144. The Panel finds the date of loss to be 2 August 1990.

XXIII. STATE ENTERPRISE FOREIGN ECONOMIC ASSOCIATION 'MACHINOIMPORT' SE/VO 'MACHINOIMPORT'

782. STATE ENTERPRISE FOREIGN ECONOMIC ASSOCIATION 'MACHINOIMPORT' SE/VO 'MACHINOIMPORT' ("Machinoimport") is a Russian legal entity involved in the construction and development of oil, gas and coal projects and the exportation and importation of equipment and raw materials throughout the world. Machinoimport seeks compensation in the amount of US$812,594,345 for contract losses, loss of tangible property, payment or relief to others and interest.

783. For the reasons stated in paragraph 37, the Panel does not address the issue of the compensability of claims for interest where the interest claim is not part of a commercial credit agreement executed at the time of the original contract.

784. At the time of Iraq's invasion and occupation of Kuwait, Machinoimport was working on six projects in Iraq: (a) the West Qurna Oil field Facility Contract dated 3 July 1987 with the State Company for Oil Projects ("SCOP") for a total value of US$637,530,046; (b) the West Qurna Drilling Contract dated 1 January 1982 with the Iraqi National Oil Company ("INOC") and its successors based on unit rates; (c) the Trans-Iraqi Pipeline Contract dated 20 May 1986 with SCOP for a total value of US$98,950,000; (d) the Pipeline Stringing Contract dated 8 January 1989 with SCOP for a total value of US$6,494,011; (e) the Pipeline Welding Contract dated 8 January 1989 with SCOP for a total value of US$10,990,410; and (f) the Technical Assistance Contract dated 14 August 1988 with SCOP. With respect to the Technical Assistance Contract, Machinoimport seeks compensation only for unproductive labour costs.

785. Machinoimport was also performing work in Ahmadi, Kuwait at the time of Iraq's invasion of Kuwait. On 12 November 1988, Machinoimport entered into a contract with the Kuwait Oil Company ("KOC") for the design, supply, construction and commissioning of a Dehydration/Desalting plant on a turnkey, fixed price lump sum basis ("Dehydration Contract"). The total value of the Dehydration Contract was US$61 million.

786. In support of its stated losses, Machinoimport submitted extensive documentation, including all of the pertinent contracts and subcontracts, certificates demonstrating acceptance of work performed, payroll records, tangible property schedules supported by customs declarations and other documentation, invoices, bills of lading, receipts, as well as non-documentary evidence.

A. Contract losses in Iraq

1. West Qurna Facility Contract

787. Machinoimport seeks compensation in the amount of US$384,546,919 plus interest for losses relating to the construction of the West Qurna Oil facility. The West Qurna Facility Contract required Machinoimport to construct, over a four-year period on a turnkey, fixed price lump sum basis, a fully functional oil field facility. The contract was divided into two portions. The first part was the execution of the necessary design work. The second part comprised the provision of equipment and the execution of construction and engineering work. At the time of Iraq's invasion of Kuwait, Machinoimport had completed approximately 72.4 per cent of the entire work: 98 per cent of the design work; 72 per cent of the equipment deliveries; and just over 50 per cent of the construction works.

788. The payment terms for the design work and equipment portion of the West Qurna Facility Contract were set out in what was described as a "State Credit granted in accordance with the Soviet-Iraqi Agreement of November 23, 1983 and in accordance with the Arrangement between the Bank of Foreign Trade of the USSR, Moscow, and the Central Bank of Iraq, Baghdad, of April 3 1984" (hereinafter, the "State Credit Agreement"). Machinoimport advised the Panel of the strict confidentiality of these agreements, the terms of which the Government of the Russian Federation has not permitted to be released.

789. The payment terms for the construction and engineering portion of the West Qurna Facility Contract were set out in a commercial credit agreement in the original construction contract granted by Machinoimport to SCOP. This commercial credit facility provided for a three-year grace period, which ran from the first date of utilisation of the credit. Thereafter, repayment was to be effected in five equal annual instalments with interest at a rate of 5.5 per cent per annum. Many, but not all, of the invoices were accompanied by a payment schedule setting forth the principal and interest due according to the terms of the credit agreement. Additionally, Machinoimport entered into a fixed price lump sum contract with a third party supplier for certain equipment. Machinoimport stated that neither of these portions of the West Qurna Facility Contract were subject to the terms and provisions of the State Credit Agreement.

790. With respect to the stated losses, the payment of which was pursuant to the terms of the State Credit Agreement, the Panel finds that the Commission has jurisdiction only over those losses in relation to which the performance of work or delivery of equipment or materials occurred after 2 May 1990.

791. With respect to the stated losses, the payment of which was pursuant to terms of the commercial credit agreement, the Panel finds that such losses are within the jurisdiction of the Commission and in principle compensable if the losses are the direct result of Iraq's invasion occupation of Iraq and supported by sufficient and appropriate evidence.

(a) Undelivered specially manufactured equipment

792. Machinoimport seeks compensation in the amount of US$4,083,438 for undelivered specially manufactured equipment.

793. As part of its obligations under the West Qurna Facility Contract, Machinoimport was required to supply specially manufactured equipment such as gas separators, measuring separators, mixers, pumps and compressors. At the time of Iraq's invasion of Kuwait, a ship with approximately 1,000 tons of equipment was forced to return to port. Since that time, the specially manufactured equipment has remained in storage. Machinoimport stated that it is unable to resell the equipment to other customers. However, it, offered no evidence to show that it had attempted to do so.

794. The Panel finds that Machinoimport failed to demonstrate the unique nature of this equipment. Machinoimport did not submit sufficient documentation to establish that the 1,000 tons of shipped equipment comprised specially manufactured goods, which could not, whether with or without modifications, be of use elsewhere.

795. Accordingly, the Panel recommends no compensation for undelivered specially manufactured equipment.

(b) Completed, but unpaid work

796. Machinoimport seeks compensation in the amount of US$368,729,569 for completed, but unpaid work under the West Qurna Facility Contract.

(i) Construction work

797. As set forth above, payment for construction work completed pursuant to the West Qurna Facility Contract was not subject to the State Credit Agreement, but was rather to a separate commercial credit agreement. Payment under the terms of the credit agreement were scheduled to begin on or before 15 June 1993.

798. Machinoimport submitted all invoices and payment certificates documenting completion and acceptance of the work performed. The invoices and payment certificates indicate the proportional deduction for the advance payment and the accrual of retention amounts. Machinoimport had received payment of the Iraqi dinar portion, but not of the United States dollar portion, of the sums certified in respect of construction work completed at the time of Iraq's invasion and occupation of Kuwait.

799. Notwithstanding that Iraq's unlawful invasion and occupation of Kuwait ended on 2 March 1991, the economic consequences thereof did not end immediately after cessation of the hostilities. The Panel therefore considers that losses which occurred thereafter may be compensable as they can still constitute a direct consequence of Iraq's invasion and occupation of Kuwait. However a point in time will come when it is no longer appropriate to regard events on the ground as directly caused by Iraq's invasion and occupation of Kuwait. In the present case, the Panel has

concluded that that point in time is reached three months after the ending of Iraq's occupation of Kuwait, namely at 2 June 1991.

800. The Panel recommends no compensation for payments due pursuant to the commercial credit agreement. This is because the failure of SCOP to make the payments under it (starting with the first one on 15 June 1993) was not a direct result of Iraq's invasion and occupation of Kuwait.

801. Accordingly, the Panel recommends compensation in the amount of US$6,352,339 for work performed after 2 May 1990 and in the amount of US$11,793,270 for retention amounts.

(ii) Design work

802. Payment for performance of design work was covered by the State Credit Agreement. Machinoimport submitted all invoices and acceptance certificates for the design work. All design work was performed prior to 2 May 1990 and is, therefore, outside the jurisdiction of the Commission.

803. The Panel recommends no compensation for design work.

(iii) Rent of construction equipment

804. Payment for rent of construction equipment was covered by the State Credit Agreement. Machinoimport submitted all invoices and acceptance certificates for this loss element. Only the last three invoices issued pertain to rent of equipment after 2 May 1990. Accordingly, the Panel recommends compensation in the amount of US$5,048,529 for rent of construction equipment.

(iv) Technological equipment

805. Machinoimport produced and delivered custom made technological equipment for the West Qurna Facility. Payment for the equipment was to be made pursuant to the terms of the State Credit Agreement. Machinoimport submitted all invoices, shipping documents and supporting documentation. This documentation established that all the equipment was delivered to, and accepted by, SCOP between July 1988 and October 1990. Only the invoices for dates of shipment subsequent to 2 May 1990 are compensable. Accordingly, the Panel recommends compensation in the amount of US$3,388,046 for technological equipment.

(v) Third party supply contract

806. Machinoimport contracted with a third party supplier in the amount of US$239 million for (a) the supply and delivery of equipment and materials; (b) design, engineering and training services; and (c) spare parts. This third party supply contract was not subject to the State Credit Agreement. The supplier granted a commercial credit facility to Machinoimport that mirrors the payment terms of the commercial credit facility granted to SCOP by Machinoimport.

807. Machinoimport submitted substantial documentation relevant to this alleged loss element. SCOP approved all invoices, but while Machinoimport has not received any payment from SCOP, there is no evidence that it has made any payment whatsoever to, or entered into any relevant arrangement with, its supplier. Accordingly, there has in fact been no loss on Machinoimport's part.

808. As no loss has arisen, the Panel recommends no compensation for the third party supply contract.

(vi) Commission fees for third party supply contract

809. Under the West Qurna Facility Contract, SCOP was obliged to pay Machinoimport a 2.75 per cent commission fee on 98 per cent of the FOB price of the equipment and materials actually delivered by the third party supplier. Based on the documents submitted in support of the third party supplier contract, the Panel finds that four deliveries were made by the supplier and accepted by SCOP after 2 May 1990. Accordingly, the Panel recommends compensation in the amount of US$1,907,974 for commission fees.

(c) Loss of profits

810. Machinoimport seeks compensation in the amount of US$11,733,912 for loss of profits on the West Qurna Facility Contract, representing 10 per cent of the value of the construction work that remained to be completed. At the time of the collapse of the project, the work was just over 50 per cent completed.

811. The Panel finds that the evidence provided by Machinoimport fails to demonstrate that the contract would have been profitable as a whole. On the date of the collapse of the project, the contract appears to have had a surplus in revenues. However, Machinoimport did not provide any additional evidence of the projected revenues and expenses of the project through completion. Additionally, two other Machinoimport contracts completed during the 1990s were examined and it was determined that Machinoimport had incurred losses on both of those contracts.

812. Machinoimport failed to demonstrate either that the West Qurna Facility Contract would have been profitable as a whole and that historically other Machinoimport contracts in Iraq were always or at least usually profitable. Applying the approach taken with respect to loss of profits on a particular project set out in paragraphs 133 to 138, the Panel recommends no compensation for loss of profits on this contract.

(d) Recommendation for West Qurna Facility Contract

813. Based on the foregoing, the Panel recommends compensation in the amount of US$28,490,158 for the West Qurna Facility Contract.

2. West Qurna Drilling Contract

814. Machinoimport seeks compensation in the amount of US$21,475,071 plus interest for unpaid work and loss of profits. In January 1982, Machinoimport and the INOC entered into a contract to develop and transport drilling rigs over a five-year period.

(a) Completed, but unpaid work and services

815. Approximately 22 months after signing the original contract, the parties entered into a credit arrangement using bills of exchange with three-year maturity dates and an interest rate of five per cent per annum. The Panel finds that this credit arrangement was not part of the original contract, but merely a rescheduling of the original payment terms. For the reasons set forth in paragraphs 21 to 23 and paragraphs 72 to 81, the Panel finds that only the work performed after 2 May 1990 is within the jurisdiction of the Commission.

816. Machinoimport submitted sufficient documentation to demonstrate the work completed and accepted by its Iraqi employer for the work performed and for the transportation services. The Panel finds the value of invoices submitted for work performed subsequent to 2 May 1990 is US$4,960,595. The Panel finds the value of invoices submitted for transportation services after 2 May 1990 is US$140,460.

817. The Panel recommends compensation in the amount of US$5,101,055 for completed, but unpaid work and services.

(b) Loss of profits

818. Applying the approach taken with respect to loss of profits set out in paragraphs 131 to 138 and paragraphs 810 to 812, the Panel recommends no compensation for loss of profits on the West Qurna Drilling Contract.

(c) Recommendation for West Qurna Drilling Contract

819. Based on the foregoing analysis, the Panel recommends compensation in the amount of US$5,101,055 for the West Qurna Drilling Contract.

3. Trans-Iraqi Pipeline Contract

820. Machinoimport seeks compensation in the amount of US$131,491,200 plus interest for unpaid work for construction of a dry gas pipeline from Nassiriya-Baghdad to North Rumaila-Zubai. In addition to the pipeline, Machinoimport constructed a compressor station at North Rumaila, a telecommunications and telecontrol system and a service road. The Trans-Iraqi Pipeline Contract was broken down into five separate contracts as follows: (a) Phase I Construction of the 345 km pipeline; (b) Phase II Construction of the 31 km pipeline; (c) Loopings Construction; (d) Linear Supply Contract; and (e) Compressor Supply Contract.

821. At the time of Iraq's invasion of Kuwait, 98.7 per cent of the work under the Trans-Iraqi Pipeline Contract had been completed, and virtually all of the equipment and supplies under the Linear Supply Contract and the Compressor Supply Contract had been delivered. The only work remaining to be performed was the performance test on the compression station that had been delayed due to defective generators.

(a) Completed, but unpaid work

822. As part of the original contract terms for Phase I Construction, Machinoimport and SCOP executed a Commercial Credit Agreement in the original principal amount of US$31,697,829 with interest at a rate of 5.5 per cent per annum. The Commercial Credit Agreements provided SCOP with a three-year grace period, commencing on the earliest date of work, with payment for work performed to be made over five years in equal annual instalments, commencing on or before 15 June 1991.

823. The terms for the extension of commercial credit under Phase II Construction and the Loopings Construction contracts mirrored the Commercial Credit Agreement for Phase I Construction. However, the payment schedule for the Loopings Construction was to start in June 1992 and for Phase II Construction in June 1994. As was the case with the West Qurna Facility Contract, Machinoimport submitted invoices that were accompanied by payment schedules setting forth the principal and interest due according to the terms of the respective credit agreements.

824. Machinoimport seeks compensation for completed, but unpaid work in the amount of US$26,956,144 for Phase I Construction of the 345 km pipeline; US$2,408,925 for Phase II Construction of the 31 km pipeline; and US$10,293,908 for Loopings Construction. Machinoimport submitted sufficient documentation to demonstrate the work completed and accepted by its Iraqi employer in respect of Phase I, Phase II and the Loopings Construction.

825. The Panel finds that such losses are within the jurisdiction of the Commission and in principle compensable if the losses are the direct result of Iraq's invasion occupation of Iraq and supported by sufficient and appropriate evidence.

826. For the reasons set forth in paragraph 799, the Panel finds that Iraq's failure to make the payments due under the commercial credit agreement for Phase I Construction, for Phase II Construction and for the Loopings Construction was not a direct result of Iraq's invasion and occupation of Kuwait.

827. Accordingly, the Panel recommends no compensation for completed, but unpaid work on the Trans Iraqi Pipeline.

(b) Third party supply contracts

828. With respect to the third party supply contracts, Machinoimport and SCOP entered into separate Commercial Credit Agreements for each supplier

contract. Under the terms of the Commercial Credit Agreements, Machinoimport granted SCOP a 42 month deferred payment arrangement from the date of shipment at an interest rate of 7.75 per cent per annum for the Compressor Supply Contract and 7.5 per cent per annum for the Linear Supply Contract. Pursuant to the terms of both the Compressor Supply Contract and the Linear Supply Contract, the first date of shipment triggered the start of the grace period and the accrual of interest. Finally, Machinoimport was entitled to a 2 per cent commission fee on the Compressor Supply Contract and a 3 per cent commission fee on the Linear Supply Contract.

829. The first of the five equal annual instalment payments from SCOP on the Compressor Supply Contract was due in or about 20 May 1990 and on the Linear Supply Contract on 31 July 1990. Again, the invoices submitted by Machinoimport set forth the payment schedules under the respective supply contracts.

830. Machinoimport seeks compensation in the amount of US$26,372,588 for the Compressor Supply Contract and US$65,459,635 for the Linear Supply Contract in respect of the delivery of equipment and supplies used on the Trans-Iraqi Pipeline Contract.

831. Machinoimport submitted sufficient evidence of the deliveries of equipment and material by both third party suppliers. Machinoimport submitted sufficient evidence of its payment of the third party suppliers for the delivered equipment under both contracts for the years 1990 and 1991. Machinoimport stated that the balance of payments were made by its predecessor in interest and that evidence of payment could not be located. The Panel finds that only the amounts proved to have been paid by Machinoimport are compensable.

832. Additionally, the Panel finds that SCOP's failure to make the payments due under the terms of the commercial credit agreements for each of the supply contracts is a direct result of Iraq's invasion and occupation of Kuwait. Based on the schedule of payments as reconstructed, the Panel recommends compensation in the amount of US$14,938,152 for the Compression Supply Contract and US$22,795,748 for the Linear Supply Contract.

(c) Recommendation for Trans-Iraqi Pipeline Contract

833. Based on the foregoing analysis, the Panel recommends compensation in the amount of US$37,733,900 for contract losses on the Trans-Iraqi Pipeline Contract.

4. Strategic Pipeline Contracts

834. On or about 8 January 1989, Machinoimport entered into two contracts with SCOP concerning Iraq's strategic pipeline project: the Pipeline Stringing Contract and the Pipeline Welding Contract. Both contracts contained identical payment schedules and set forth a commercial credit agreement whereby Machinoimport granted SCOP a three-year grace period, with the principal to be repaid in five equal annual instalments due on or

before 15 June of the payment year together with interest at a rate of 5.5 per cent per annum.

(a) Pipeline Stringing Contract

835. Machinoimport seeks compensation in the amount of US$2,454,650 plus interest for work completed but not paid and loss of profits on the Pipeline Stringing Contract.

836. Machinoimport submitted one invoice dated 20 May 1993 for work that had been completed between December 1989 and December 1990. Machinoimport stated that this invoice was the result of a meeting with SCOP to determine the outstanding amounts due and owing under the Pipeline Stringing Contract. According to the documents submitted by Machinoimport, the first payment under the credit agreement was to be made on or before 15 June 1994.

837. The Panel finds that the failure of SCOP to make the first payment was not a direct result of Iraq's invasion and occupation of Kuwait.

838. Applying the approach taken with respect to loss of profits on a particular project set out in paragraphs 133 to 138 and 810 to 812, the Panel recommends no compensation for loss of profits on Pipeline Stringing Contract.

839. Based on the foregoing analysis, the Panel recommends no compensation for losses incurred on the Pipeline Stringing Contract.

(b) Pipeline Welding Contract

840. Machinoimport seeks compensation in the amount of US$4,167,353 plus interest for unpaid work and loss of profits on the Pipeline Welding Contract.

841. With respect to the Pipeline Welding Contract, Machinoimport submitted one invoice dated 20 May 1993 for work that had been completed between December 1989 and December 1990. Machinoimport stated that this invoice was the result of a meeting with SCOP to determine the outstanding amounts due and owing under the Pipeline Welding Contract. According to the documents submitted by Machinoimport, the first payment under the credit agreement was to be made on or before 15 June 1994.

842. The Panel finds that the failure of SCOP to make the first payment under the commercial credit agreement was not a direct result of Iraq's invasion and occupation of Kuwait.

843. The Panel recommends no compensation for unpaid work.

844. Applying the approach taken with respect to loss of profits on a particular project set out in paragraphs 133 to 138 and 810 to 812, the Panel recommends no compensation for loss of profits on Pipeline Welding Contract.

845. Based on the foregoing analysis, the Panel recommends no compensation for losses incurred on the Pipeline Welding Contract.

B. Contract losses in Kuwait

846. Machinoimport seeks compensation in the amount of US$841,338 plus interest for loss of profits on the Dehydration Project.

847. At the time of Iraq's invasion of Kuwait, the Dehydration Project was 57.57 per cent complete. Machinoimport had completed and been paid for virtually all of the design and supply work required. At the time of the invasion, all work stopped on the project. On 20 July 1991, KOC informed Machinoimport that the Dehydration Project was terminated due to Iraq's invasion and occupation of Kuwait.

848. Machinoimport stated that its typical profit margin on contracts "such as the Dehydration Contract with Kuwait is 10%." In support of this statement Machinoimport offered the financial information for the five Iraqi projects above. The Panel finds that this documentation does not establish that Machinoimport would have earned any profit on the Dehydration Project.

849. For the reasons set forth in paragraphs 133 to 138 and 810 to 812, the Panel recommends no compensation for the Dehydration Contract.

C. Loss of tangible property

850. Machinoimport seeks compensation in the amount of ID 9,835,703 and KD 1,183,069 for loss of tangible property from project sites in Iraq and Kuwait.

1. Iraqi projects

851. The tangible property that Machinoimport temporarily imported into Iraq was located at four sites within a 30 kilometre area near West Qurna. In response to a request by the Panel for further information, Machinoimport elaborated the presentation of its original claim to indicate that the majority of the damaged or destroyed assets were located at the West Qurna project site and were used in the execution of the West Qurna Facility Contract and the West Qurna Drilling Contract.

852. Machinoimport provided full documentation in support of the stated losses. The evidence provided by Machinoimport established its ownership of the assets and the presence of those assets in Iraq and described the damage and destruction of those assets as a result of heavy air attacks, fires and subsequent civil disorder that occurred on and after 17 January 1991. Machinoimport supplemented its written documentation with eyewitness accounts, video tapes and photographs.

853. In valuing some of its tangible asset losses in Iraq, Machinoimport failed to depreciate fully certain machinery, equipment and furniture to

the end of December 1990. The Panel has accounted for the additional depreciation in its analysis of these stated losses.

854. Additionally, Machinoimport sought to increase the amount of its original claim for metalwork in its responses to the Questions to the Claimant. However, for the reasons set out in paragraphs 61 to 63 (amending claims after filing), the Panel did not consider Machinoimport's claim for the revised amount.

855. The Panel's findings regarding each asset type are set forth in the following table:

Table 20. Machinoimport's loss of tangible property (Iraqi projects)

Asset type	Amount claimed (ID)	Recommended compensation (ID)
Vehicles	2,245,448.145	2,245,448.145
Machines	3,859,854.520	3,509,041.207
Caravans	2,860,654.418	2,860,654.418
Metalwork	246,919.885	237,850.020
Furniture	622,826.282	585,047.536
Total	9,835,703.250	9,438,041.326

856. Based on the foregoing analysis and using the currency exchange rate as of 31 December 1990, the Panel recommends compensation in the amount of US$30,347,400 for tangible property losses in Iraq.

2. Kuwaiti project

857. Machinoimport seeks compensation in the amount of KD1,183,069.002 for loss of tangible property in Kuwait. Machinoimport stated that all of its equipment located in Kuwait was destroyed or damaged beyond repair by the Iraqi troops who occupied the Dehydration Project's industrial base and by the subsequent bombing of the industrial base by the Allied Forces.

(a) Imported assets

858. The Panel finds that Machinoimport provided inconsistent documentation to support all of the stated losses. On the one hand, the schedules submitted and verified by a Machinoimport employee are very detailed. By way of supplement to the schedules, Machinoimport provided shipping and customs documentation in addition to documentation from inspections carried out by the Government of Kuwait and documentation relating to import agents' fees. Additionally, a significant portion of the consumables, including materials, spare parts, tools and supplies were imported into Kuwait in 1989 and should have been used up in the project works prior to Iraq's invasion and occupation of Kuwait.

859. However, for the majority of items, the supporting documentation did not reconcile with the schedules submitted and verified by Machinoimport. While the Panel finds the verified statement a useful point of reference, it bases its recommendations on the sufficiency of the supporting documentation submitted by Machinoimport.

860. The Panel's findings regarding each imported asset type are set forth in the following table:

Table 21. Machinoimport's tangible property imported into Kuwait

Asset type	Amount claimed (KD)	Recommended compensation (KD)
Imported heavy equipment	468,942.166	95,550.300
Imported vehicles	71,710.750	61,251.750
Power supply and welding equipment	101,683.862	36,746.650
Miscellaneous equipment	139,929.275	125,164.800
Industrial-based material and supplies	183,730.000	67,218.400
Total	965,996.053	385,931.900

861. Based on the foregoing analysis and using the currency exchange rate as of 17 August 1990, the Panel recommends compensation in the amount of US$1,335,404 for loss of tangible assets imported into Kuwait.

(b) Locally purchased assets

862. Machinoimport also sought compensation in the total amount of KD217,072.949 for loss of tangible property purchased in Kuwait. In support of its claim, Machinoimport provided schedules of the assets. The schedules were verified by affidavit, but were unsupported by any other documentation or explanation of their preparation. The Panel finds that Machinoimport did not submit sufficient evidence to support loss of locally purchased assets. Accordingly, the Panel recommends no compensation for these losses.

3. Recommendation for loss of tangible property

863. Based on the foregoing analysis, the Panel recommends compensation in the amount of US$31,682,804 for tangible property losses.

D. Payment or relief to others

1. Protection of assets in Iraq

864. Between 27 December 1990 and 9 January 1991, Machinoimport entered into six contracts for the storage and protection of Machinoimport's

property and equipment located at various sites in Iraq after the withdrawal of its personnel. Machinoimport seeks compensation in the amount of ID 290,586 for such mitigation costs.

865. Machinoimport stated that the property that was the subject of these six contracts was first damaged or destroyed by certain military operations conducted in January 1991 and then vandalised and further damaged beyond repair during the breakdown of civil order in Iraq. A representative of Machinoimport returned to Iraq in October 1991 to inspect Machinoimport's project sites and to assess the damage. Machinoimport stated that, during this visit, Machinoimport determined the specific termination dates for each of the six security contracts. However, Machinoimport failed to explain the facts or reasoning for its determinations.

866. Despite Machinoimport's good faith efforts to minimize its potential losses, the Panel finds that Machinoimport did not submit sufficient evidence to support this loss. Machinoimport did not identify the approximate dates of damage or destruction of the safeguarded assets for any of the contracts. More importantly, Machinoimport did not provide evidence of payment of the salaries and expenses incurred, explain the mechanism for payments, or explain the lack of documentation.

867. The Panel recommends no compensation for expenses incurred in relation to the protection of assets in Iraq.

2. Additional wages paid - Iraqi projects

868. Machinoimport seeks compensation in the amount of ID7,984,787.361 for additional wages paid to its specialists and personnel who were detained in Iraq from August 1990 to January 1991.

869. At the time of Iraq's invasion and occupation of Kuwait, Machinoimport employed some 4,769 specialists and personnel at the six project sites in Iraq. Because Iraq delayed the issue of exit visas, Machinoimport gradually repatriated its specialists and personnel between August 1990 and January 1991. During this period, Machinoimport paid its workforce to close down its operations at each site and to take appropriate steps to secure and protect the work sites, property and equipment.

870. Machinoimport submitted both computerised and handwritten payroll journals that contained identification information, wages paid for the period in question, and signatures of each recipient acknowledging payment. Although there were minor discrepancies, Machinoimport submitted sufficient and appropriate evidence in the circumstances.

871. Accordingly, the Panel recommends compensation in the amount of US$25,674,557.

3. Employee maintenance and transport costs - Kuwait

872. Machinoimport seeks compensation in the amount of KD109,043.667 for the maintenance and transport of some 623 specialists working at the

Dehydration Project in Kuwait. Machinoimport withdrew its claim for air transportation from Baghdad to Moscow.

873. Machinoimport evacuated the 623 specialists from Kuwait on or about 17 August 1990. Machinoimport identified each evacuee by name, passport number and date of evacuation. Because Machinoimport does not have any receipts for the cost of maintaining these specialist in Kuwait prior to their evacuation, Machinoimport used an average expense of KD 233 per month to determine the overall cost of maintenance of the 623 specialists for 17 days. Machinoimport seeks compensation in the amount of KD 82,257 for the maintenance expenses in Kuwait.

874. Machinoimport evacuated its specialists from Kuwait first by bus to Amman, Jordan and then by air from Amman to Moscow. Machinoimport seeks compensation only for the bus transportation costs and the maintenance costs during the bus trip. Machinoimport hired 16 buses for ten days to cover the round trip from Kuwait to Jordan. Machinoimport seeks compensation in the amount of KD 1,866.667 for the cost of transport.

875. Additionally, Machinoimport incurred a per diem expense per passenger during the bus trip of KD 10 for each of the 623 evacuees for a total of KD 24,920.

876. The Panel accepts the statement of Machinoimport that it was not able to preserve all of its records concerning the evacuation expenses for its Kuwaiti-based specialists. The Panel finds that Machinoimport established that it did have 623 specialists in Kuwait at the time of Iraq's invasion and occupation of Kuwait and that these specialists were evacuated by bus from Kuwait to Amman. Further, the Panel finds that the expenditures were reasonable in the circumstances.

877. Accordingly, the Panel recommends compensation in the amount of US$377,314 for evacuation costs of its specialists in Kuwait.

4. Recommendation for payment or relief to others

878. Based on the foregoing analysis, the Panel recommends compensation in the amount of US$26,051,871 for payment or relief to others.

E. Summary of recommended compensation for Machinoimport

879. Based on its findings regarding Machinoimport's claim, the Panel recommends compensation in the amount of US$129,059,788. So far as relevant, the Panel finds the date of loss to be 17 August 1990 for losses incurred in Kuwait and 1 January 1991 for losses incurred in Iraq.

XXIV. SUMMARY OF RECOMMENDED COMPENSATION BY CLAIMANT

TABLE 22. RECOMMENDED COMPENSATION FOR THE FOURTH INSTALMENT

Claimant	Claim amount (US$)	Recommended compensation (US$)
Alpha Professional Services Pty. Ltd.	8,094,239	Nil
Technocon Limited	11,386,640	3,577,529
Mendes Junior S.A.	146,529,528	1,800,373
Technoimportexport AD	17,488,097	22,000
Mechel Contractors (Overseas) Ltd.	11,166,672	Nil
Strojexport Company Limited	99,525,690	3,288,869
Sochata S.A.	18,086,277	Nil
Som Datt Builders Limited	120,671,601	6,056,275
Snamprogetti SpA	68,594,738	Nil
Samsung Engineering and Construction Co. Ltd.	78,791,431	1,690,000
Construction Company "Pelagonija"	198,915,387	8,316,931
Dromex Roads and Bridges Construction Export Enterprise	41,479,821	1,635,818
China Nonferrous Metal Industries Corporation	42,308,482	9,886,658
Nassir Hazza Al-Subaei & Brothers Co., Ltd.	11,699,415	Nil
Dodsal Pte. Ltd.	22,646,081	2,824,426
IMP Inzeniring, Montaza, Proizvodnja d.d.	62,541,905	444,998
STFA Elta Elektrik Tesisleri A.S.	14,782,121	410,861
ABB Lummus Crest Inc.	29,600,308	2,126,144
STATE ENTERPRISE FOREIGN ECONOMIC ASSOCIATION 'MACHINOIMPORT' SE/VO 'MACHINOIMPORT'	812,594,345	129,059,788

880. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the Claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Alpha Professional Services Pty. Ltd. (Australia): Nil;

(b) Technocon Limited (Bangladesh): US$3,577,529;

(c) Mendes Junior S.A. (Brazil): US$1,800,373;

(d) Technoimportexport AD (Bulgaria): US$22,000;

(e) Mechel Contractors (Overseas) Ltd. (Cyprus): Nil;

(f) Strojexport Company Limited (Czech Republic): US$3,288,869;

(g) Sochata S.A. (France): Nil;

(h) Som Datt Builders Limited (India): US$6,056,275;

(i) Snamprogetti SpA (Italy): Nil;

(j) Samsung Engineering and Construction Co. Ltd. (Korea): US$1,690,000;

(k) Construction Company "Pelagonija" (Macedonia): US$8,316,931; and

(l) Dromex Roads and Bridges Construction Export Enterprise (Poland): US$1,635,818;

(m) China Nonferrous Metal Industries Corporation (China): US$9,886,658;

(n) Nassir Hazza Al-Subaei & Brothers Co., Ltd. (Saudi Arabia): Nil;

(o) Dodsal Pte. Ltd. (Singapore): US$2,824,426;

(p) IMP Inzeniring, Montaza, Proizvodnja d.d. (Slovenia): US$444,998;

(q) STFA Elta Elektrik Tesisleri A.S. (Turkey): US$410,861;

(r) ABB Lummus Crest Inc. (United States of America): US$2,126,144; and

(s) STATE ENTERPRISE FOREIGN ECONOMIC ASSOCIATION 'MACHINOIMPORT' SE/VO 'MACHINOIMPORT'(Russian Federation): US$129,059,788.

Geneva, 30 July 1999

(Signed) John Tackaberry
Chairman

(Signed) Pierre M. Genton
Commissioner

(Signed) Vinayak P. Pradhan
Commissioner
